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ABSTRACT

This report of a hearing before the House Subcommittee on Employment Opportunities addresses the issues of complying with Federal standards concerning equal representation of minorities and women in Federal jobs. In 1984, three agencies refused to submit affirmative action goals and timetables: The Department of Justice, the Federal Trade Commission, and the National Endowment for the Humanities. In her testimony, Representative Collins of Illinois introduced an amendment to her original bill, H.R. 781, which would make an agency that does not provide mandatory employment goals and timetables liable to a civil suit on the part of the Equal Employment Opportunity Commission (EEOC) or by any employee of the negligent agency. The director of Public Sector Programs, Equal Employment Opportunity Commission, submitted an extensive statement on his agency's tracking of and reporting formats for affirmative action goals. Testimony was then heard from various representatives of the agencies not in compliance, explaining and justifying their positions. Testimony was also heard from various other government and non-government agencies concerning the pros and cons and enforcement of the affirmative action goals. (CG)

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THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION COLLECTION OF FEDERAL AFFIRMATIVE ACTION GOALS AND TIMETABLES AND ENFORCEMENT OF FEDERAL SECTOR EEO COMPLAINTS

ED267163

HEARING

BEFORE THE

SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES

OF THE

COMMITTEE ON EDUCATION AND LABOR
HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

HEARING HELD IN WASHINGTON, DC, JULY 23, 1985

Serial No. 99-24

Printed for the use of the Committee on Education and Labor

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THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION COLLECTION OF FEDERAL AFFIRMATIVE ACTION GOALS AND TIMETABLES AND ENFORCEMENT OF FEDERAL SECTOR EEO COMPLAINTS

TUESDAY, JULY 23, 1985

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON EMPLOYMENT OPPORTUNITIES,
COMMITTEE ON EDUCATION AND LABOR,
Washington, DC.

The subcommittee met, pursuant to call, at 9:04 a.m., in room 2257, Rayburn House Office Building, Hon. Matthew G. Martinez (chairman of the subcommittee) presiding.

Members present: Representatives Martinez, Williams, Hayes, Hawkins (ex officio), and Gunderson.

Also present: Representative Murphy.

Staff present: Eric P. Jensen, acting staff director; Paul Cano, legislative assistant; Genevieve Galbreath, chief clerk/staff assistant; Patricia L. Kelly, staff assistant; Dr. Beth Buehlmann, Republican staff director for education; and Mary Gardner, Republican legislative associate.

Mr. MARTINEZ. This hearing of the Subcommittee on Employment Opportunities will now come to order.

I will make my opening statement now and then ask Mr. Hayes if he has one.

In a preliminary EEOC report on employment of minorities, women, and handicapped individuals in the Federal Government for fiscal year 1983, the EEOC pointed out that "work still needs to be done before the Federal Government achieves a completely representative work force."

In that same report, the EEOC found that "Despite some upward movement, women and minorities are underrepresented in several categories of the Federal Government, compared to the civilian work force. Despite some gains, blacks, Hispanics, American Indians and women are still concentrated in the lower-paid positions.

"In most agencies, handicapped individuals remain underrepresented in occupational categories and at all grade levels. Hispanics continue to be the only minority group which is underrepresented in the Federal work force as a whole in comparison to the national civilian labor force."

It is readily apparent, then, that despite the role of the Federal Government as a model employer in the country, underrepresentation of women and minorities still remains a major problem.

As in all employment policy decisions, a priority must be established before an organization can proceed to fulfill its objectives. It is my sincere hope that the equal employment and utilization of all groups of workers is the highest goal of the Federal Government. Thus, the assessment of worker representation and the use of corrective devices such as goals and timetables should be an integral part of affirmative action plans submitted by Federal agencies to the EEOC.

According to competent legal advice offered by the Congressional Research Service and other advisory groups, section 717 of title VII of the Civil Rights Act of 1964 and section 310 of the Civil Service Reform Act of 1978 obliges Federal agencies to develop and carry out affirmative action programs. At the same time, Congress and the executive branch have given EEOC authority to issue directives to agencies on how to fulfill these affirmative action responsibilities and has required agencies to comply with EEOC's instructions. Accordingly, EEOC Management Directive 707 and 707A require agencies to develop goals and timetables in their affirmative action plans and submit them to EEOC by December 31 of each year.

Last year the Department of Justice, the Federal Trade Commission, and the National Endowment for the Humanities refused to abide by the governing laws requiring agency submission of affirmative action goals and timetables in their plans. It is the concern of this chair and the public citizens that responsible heads of agencies should not take the law into their own hands, especially when 107 other Presidentially-appointed directors of agencies complied lawfully, and three chose to disobey the law which they dislike. There is no basis in law or any Federal court decisions which support the recalcitrant agencies' position. The mere use of recruitment and training belies the sincerity of the agencies in achieving full employment opportunities for minority workers. Today's witnesses will address both sides of the issue.

With that, before I turn to Mr. Hayes, I would like to recognize Mr. Murphy, who has joined us because he has a constituent testifying here today. Has your constituent arrived yet?

Mr. MURPHY. No, Mr. Chairman. I am just very concerned with the matter that you're looking into and would like the privilege of sitting in on part of your hearings.

Mr. MARTINEZ. Very good.

Mr. Hayes, do you have an opening statement?

Mr. HAYES. Mr. Chairman, just let me thank you first for calling this hearing. I notice we have a rather impressive list of witnesses this morning, headed by my colleague from Illinois, Congresswoman Collins, and certainly I don't want to be guilty of using up any unnecessary time with a statement. I want to get right to the witnesses and listen to what they have to say this morning.

Thank you very much.

Mr. MARTINEZ. Very good, Mr. Hayes.

We are joined by Gus Hawkins, the Chairman of the full Education and Labor Committee. Mr. Hawkins, do you have an opening statement?

Mr. HAWKINS. I have no statement.

[The opening statement of Hon. Pat Williams follows:]

OPENING STATEMENT OF HON. PAT WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MONTANA

I am pleased Mr. Chairman to join you and others today in a series of hearings on the Equal Employment Opportunity Commission and the enforcement of equal employment in the federal government. Vigorous equal employment enforcement in the federal government is critical because it sets an important example, influences the labor market in general, and demonstrates that programs like affirmative action can make a difference. At an even more fundamental level it is intolerable that the tax money of all our citizens should be spent in any way which discriminates against some of our people.

I am particularly concerned that ceratain agencies in the Federal government have refused to submit viable affirmative action plans which include goals and timetables for hiring and I look forward to hearing from them today. I have also been disturbed by statements from Chairman Thomas against goals and timetables. As the enforcement agent for equal employment in the federal government, the EEOC must take an aggressive and realistic view of what constitutes affirmative action.

Affirmative action for twenty years has proven to be one of the most effective means of ensuring equal employment opportunity for women and minorities. Goals and timetables are a critical component of good faith affirmative action plans which achieve tangible results. Initially, over twenty years ago we tried affirmative action without goals and timetables and the results were unsatisfactory. Since then Congress and the courts have repeatedly rejected attempts to limit affirmative action and to do away with goals.

Goals and timetables are an acceptable managerial procedure to achieve all kinds of ends. It allows employers to focus on a desired result and to measure their success toward that end. Goals and timetables are even more critical today than in the past because we are faced with more subtle and hidden forms of discrimination. Goals and timetables help agencies measure their success in overcoming subtle but invidious forms of discrimination.

Critics argue that race and gender conscious remedies run counter to the ideal of a "color blind—gender blind" society and elevate group rights over individual rights. However, this ignores the fact that past discrimination against groups has persistent, present day effects in overall employment patterns and hiring practices. Only affirmative action which is group-conscious can redress the discrimination embedded in our system. Affirmative action plans with goals and timetables allow the federal government to address past institutional racism and sexism while protecting the rights of current employees.

Mr. MARTINEZ. With that, we will proceed with the first witness, the Honorable Cardiss Collins, a Member of Congress from Illinois. Mrs. Collins.

STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mrs. COLLINS. Thank you, Mr. Chairman, and all the members of the subcommittee and the full committee here. I sincerely thank you for the invitation to appear before you today to discuss H.R. 781, legislation I introduced on January 30 to strengthen the authority of the Equal Employment Opportunity Commission in its enforcement of nondiscriminatory policies within the Federal work force. One of the main tools suggested was the use of subpoena power by the EEOC to compel compliance from recalcitrant Federal agencies.

Let me briefly note how the House Government Activities and Transportation Subcommittee, which I chair, initially became involved in this issue.

On January 16, 1984, Dr. William Bennett, who was then Chairman of the National Endowment for the Humanities, wrote to

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EEOC Chairman Clarence Thomas to announce that his agency no longer planned to comply with Federal directives which require all Federal agencies to annually submit hiring and promotion goals and timetables for its work force.

These requirements are clearly set forth in section 717 of title VII of the 1964 Civil Rights Act, as amended, and the 1978 Civil Service Reform Act. Congress has also given the EEOC authority to issue directives to all agencies on how to fulfill these affirmative action responsibilities and has required agencies to comply with EEOC's instructions. This was not a partisan issue, since 107 other Federal agencies, all headed by Presidential appointees, complied with the law for fiscal year 1984.

Mr. Bennett's decision to place himself and his Agency above the law was supported by James Miller, head of the Federal Trade Commission, and Mr. William French Smith, then Attorney General of the Department of Justice. Such civil disobedience by an Agency head, holding himself above the law, has obviously been rewarded by the White House. Mr. Bennett has been promoted to Secretary of the Department of Education, and Mr. Miller was nominated this past week to replace David Stockman as the person who controls the Federal Government's purse strings.

Our subcommittee held a hearing on July 25, 1984, to question the complete reversal by the NEH which had properly submitted the necessary employment goals and timetables for its affirmative action plans for fiscal years 1980 through 1983, and abandoned the data for fiscal year 1984. As a result of the hearing, an investigative report was issued on May 5 with specific findings and recommendations. Attached to my testimony are the subsequent replies from Mr. John Agresto, who is acting NEH Chairman, James Miller of the FTC, and Bennett of the Department of Education. Last night, very late, after 2½ months, we finally received a response from the Justice Department which we, of course, have not had a chance to read.

But at that hearing, William H. Brown, III, who chaired the EEOC during the Nixon administration, noted that—and I quote—"The refusal of the Chairman for the National Endowment for the Humanities to comply with section 717 of title VII of the Civil Rights Act of 1964, and with Executive Order 1148, as well as with the directives of the Office of Personnel Management, to identify under-representation of minorities and to establish goals and timetables where such underrepresentation exists, is inexcusable and should not be tolerated."

Quoting further: "All of us who have served in the Government have taken an oath of office to uphold and defend the Constitution of the United States as well as the laws of this country. Nowhere has it been suggested that in accepting a high Government position we would be allowed the discretion of enforcement and upholding only those laws with which we agree."

Mr. Brown further stated—and I'm quoting now—"The decision in this case of the Chairman of NEH to separate his agency from more than 100 others who have obeyed the law and the regulations of EEOC makes one wonder whether he believes that this is a nation of laws or a nation of individuals."

Now, I strongly agree with Mr. Brown that "laws that are flagrantly violated or poorly enforced weaken the entire fabric of our society and our system of justice."

Another witness, the distinguished Dr. Arthur Flemming, who was HEW Secretary under President Eisenhower, challenged the right of any agency head to ignore the law—and I quote: "In my judgment, this is a refusal to comply with the law and consequently constitutes a violation of the oath of office. The Congress said that the head of each department, agency or unit shall comply, not may comply, but shall comply with such rules, regulations, orders and instructions."

Dr. Flemming stressed the fact that all Federal officials must obey all Federal laws, whether they agree with them or not, until they can persuade the Congress to change those laws or to have the courts overturn them. Yet, this has not occurred.

Goals and timetables as a Federal requirement were not picked out of a hat. These policies were developed by the Federal Government in response to persistent employment practices within both the public and private sector which systematically excluded women and minorities from the employment marketplace and fair competition.

Since the inception of these provisions, there have been significant changes in the workplace triggered by insistent enforcement of the law by the EEOC and public demand. According to Dr. Flemming, "Affirmative action remedies have led to significant improvements in the occupational status of minorities and women. Gains have occurred in the professions, in managerial positions, in manufacturing and trucking, in police and fire departments and other public service positions. These gains are linked specifically to enforcement of the goals and timetable requirements of the contract compliance program and to court orders and consent decrees for ratio hiring."

At that same hearing, almost 1 year ago, EEOC Chairman Clarence Thomas stated that, contrary to opinions rendered by NEH, FTC, and the Department of Justice, the EEOC was fully empowered to require all Federal agencies to comply with these requirements, including goals and timetables.

"The EEOC is the lead agency authorized to issue such orders, directives and other instructions as it deems necessary to Federal agencies with regard to their equal opportunity programs. Therefore, there is no legitimate question with regard to the Commission's authority to seek information it deems appropriate." This was according to Mr. Thomas.

In a follow-up review by the American Law Division of the Congressional Research Service, the investigating attorneys fully supported EEOC's authority to set employment goals for women and minorities, both in the statutes and in a series of Executive Orders 11246, 11478, and 12076. It also noted that under regulations issued by the Office of Personnel Management:

> All agencies must include their plans for minority recruitment in the EEO plans which they submit to the EEOC each year. Such plans must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress toward eliminating underrepresentation can be measured.

The necessary statute is there.

Thomas stressed that, "We have viewed our statutory authority and obligations to be at odds" with the position espoused by NEH.

> The problem we have with them (NEH) is they are not providing us with goals and timetables that we require to develop the plan that is required under Section 717. That's the violation . . . They may have, for example, the best numbers in the world and not provide us with goals and timetables. That's the problem.

That's from my hearing record, also.

And the EEOC was powerless to do anything to compel compliance, Thomas said. He asked that Congress toughen the current statute so the Commission could go after recalcitrant agencies who willfully ingore the law:

> I think that for noncompliance, if we had in place sanctions or some sort of mechanism to require compliance, then perhaps we could get compliance, whether or not this sort of quasi-civil disobedience is valid or not. But right now we have no sanctions to impose against any agencies. All we can do is report noncompliance to Congress.

That's according to Mr. Thomas.

Then I said further, "Would you like to see Congress strengthen the enforcement provisions that might be necessary for compliance? Would that be beneficial?" Mr. Thomas replied, "I think that Congress could simply give us some enforcement provisions. There aren't any right now."

In the year since those remarks, Mr. Thomas has gone full circle on what he thinks his agency should be doing. He testified before my colleague, Representative Gus Hawkins, who chairs this Committee on Education and Labor, that "I do not support the use of goals and timetables."

Ironically, in 1983, that same EEOC Chairman had written to the Attorney General to warn that the use of goals in Federal employment was required, had been required for some time, and that the EEOC "strongly protested" the action by the Justice Department which he said "constitutes not only a sharp departure from acceptable standards of interagency protocol, but was an action taken in derogation of this agency's statutory designation as the chief interpreter of title VII of the Civil Rights Act of 1964, as amended."

Thomas concluded the January 26, 1983 letter to William French Smith with the comment that "every member of the Commission finds this unilateral action by the Department of Justice deplorable." Obviously, Mr. Thomas has conveniently chosen to forget his own remarks, as well as his written statements.

Initially when I introduced H.R. 781, it was to provide subpoena power to the EEOC so that the agency would have the necessary legal muscle to seek full compliance. However, subsequent remarks by Chairman Thomas and members of his Commission made me question whether the agency would use this power if Congress did, indeed, provide it.

Therefore, today I am introducing an amendment in the form of a substitute which I think would be easier to administer and to implement without lessening the same desired effect. My substitute amendment would provide, first, that if an agency has not provided the mandatory employment goals and timetables as part of the annual affirmative action statement by the conclusion of the fiscal year on September 30, the EEOC would be empowered to initiate

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civil action in U.S. District Court to compel that any department, agency or appropriate unit provide the data.

Secondly, if the EEOC does not take appropriate legal action by October 31, a month later, of that same calendar year against any agency which has not filed the required information, then an employee of that department, agency or unit could seek legal action in District Court, or a labor organization on behalf of that employee may undertake the necessary legal action.

I believe these provisions may be less cumbersome than going to the Comptroller General or wading through the lengthy delays that could be incurred in the earlier proposal for the subpoena process. We need action and we need it now. In a country of 238 million people, we simply cannot allow each person to decide what laws they will obey and which they will disregard, or we could have complete chaos.

In closing, let me urge this subcommittee to review the clear distinctions between the goals and timetables prescribed by the laws versus the emotionally volatile buzz word of quotas which the Justice Department and the White House keep trying to cloud the issue with. Let us set the record straight on these words with a definition that was provided by the Department of Labor during a previous Republican administration:

> Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

Finally, let me state for the record that the Supreme Court decisions in Baake and Fullilove all strongly indicate that race-conscious remedies, including goals and ratios, are a lawful means for dealing with the effects of prior discrimination.

I can believe that the world is square or that the ocean is red or that today is Saturday; but my own personal opinion, no matter how deeply held, does not alter any of those factual realities. The same concepts apply to the goals and timetables requirements which are currently part of the law. Anyone can disagree with them, but until they are changed by the courts and/or the Congress, they are the law and each Federal head has an ethical obligation to provide that data under his or her oath of office, and the EEOC has an obligation to enforce the tenets of that law as long as it remains on the books.

Mr. Chairman, I thank you for the opportunity to testify before you this morning.

[The prepared statement of Hon. Cardiss Collins, with attachments, follows:]

PREPARED STATEMENT OF HON. CARDISS COLLINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Martinez and members of this subcommittee, I want to thank you for your invitation to appear before you today to discuss H.R. 781, legislation I introduced on January 30 to strengthen the authority of the Equal Employment Opportunity Commission (EEOC) in its enforcement of nondiscriminatory policies within the federal work force. One of the main tools suggested was the use of subpoena power by the EEOC to compel compliance from recalcitrant federal agencies.

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Such civil disobedience by an agency head, holding himself above the law, has obviously been rewarded by the White House. Mr. Bennett has been promoted to Secretary of the Department of Education and Mr. Miller was nominated this past week to replace David Stockman as the person who controls the Federal purse strings.

Our subcommittee held a hearing on July 25, 1984 to question the complete reversal by the NEH, which had properly submitted the necessary employment goals and timetables for its affirmative action plans for FY 1980 through FY 1983, and abandoned the data for FY 1984. As a result of the hearing, an investigative report was issued on May 6, with specific findings and recommendations. Attached to my testimony are the subsequent replies from John Agresto, acting NEH Chairman; James Miller of the FTC; and Bennett of the Department of Education. We have received no response from the Justice Department in spite of repeated phone calls and correspondence.

At that hearing, William H. Brown, III, who chaired the EEOC during the Nixon Administration, noted that:

"The refusal of the Chairman for the National Endowment for the Humanities to comply with section 717 of Title VII of the Civil Rights Act of 1964 and with Excecutive Order 1148 as well as with the directives of the Office of Personnel Management to identify underrepesentation of minorities and to establish goals and timetables where such underrepresentation exists is inexcusable and should not be tolerated.

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Mr. Brown further stated that:

"The decision in this case of the Chairman of NEH to separate his agency from more than 100 others who have obeyed the law and the regulations of EEOC makes one wonder whether he believes this is a nation of laws or a nation of individuals." [Hearing, p. 71]

I strongly agree with Brown that "laws which are flagrantly violated or poorly enforced weaken the entire fabric of our society and our system of justice."

Another witness, the distinguished Dr. Arthur Flemming, who was HEW Secretary under President Eisenhower, challenged the right of any agency head to ignore the law:

"In my judgement, this is a refusal to comply with the law and consequently constitutes a violation of the oath of office.

"The Congress said that the head of *each* department, agency or unit *shall* comply, not *may* comply, but *shall* comply with such rules, regulations, orders and instructions."

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Since the inception of these provisions, there have been significant changes in the work place, triggered by insistent enforcement of the law by the EEOC and public demand.

According to Dr. Flemming:

"Affirmative action remedies have led to significant improvements in the occupational status of minorities and women. Gains have occurred in the professions, in managerial positions, in manufacturing and trucking, in police and fire departments and other public service positions. These gains are linked specifically to enforcement of the goals and timetable requirements of the contract compliance program and to court orders and consent decrees for ratio hiring."

At that same hearing, almost one year ago, EEOC Chairman Clarence Thomas stated that, contrary to opinions rendered by NEH, FTC, and the Department of Justice, the EEOC was fully empowered to require all federal agencies to comply with these requirements, including goals and timetables.

"The EEOC is the lead agency authorized to issue such orders, directives and other instructions as it deems necessary to federal agencies with regard to their equal opportunity programs. Therefore, there is no legitimate question with regard to the Commission's authority to seek information it deems appropriate." [Hearing transcript, p. 20]

In a follow-up review by the American Law Division of the Congressional Research Service, the investigating Attorneys fully supported EEOC's authority to set employment goals for women and minorities, both in the statutes and in a series of Executive Orders 11246, 11478 and 12076. It also noted that under regulations issued by the Office of Personnel Management, "all agencies must include their plans for minority recruitment in the EEOC plans which they submit to the EEOC each year. Such plans must include annual specific determinations of underrepresentation for each group and must be accompanied by quantifiable indices by which progress toward eliminating underrepresentation can be measured." [5 CFR 720.205(b)]

Thomas stressed that "we have viewed out statutory authority and obligations to be at odds" with the position espoused by NEH. "The problem we have with them [NEH] is they are not providing us with goals and timetable that we require to develop the plan that's required under Section 717. That's the violation . . . they may have, for example, the best numbers in the world and not provide us with goals and timetables. That's the problem." [Hearing, p. 29]

And the EEOC was powerless to do anything to compel compliance, Thomas said. He asked that Congress toughen the current statute so the Commission could go after recalcitrant agencies who willfully ignore the law:

"I think that for noncompliance, if we had in place sanctions or some sort of mechanism to require compliance, then perhaps we could get compliance, whether or not this sort of quasi-civil disobedience is valid or not. But right now, we have no sanctions to impose against any agencies. All we can do is report noncompliance to Congress.

Representative COLLINS. Would you like to see Congress strengthen the enforcement provisions that might be necessary for compliance? Would that be beneficial?

Mr. THOMAS. I think that Congress could simply give us some enforcement provisions. There aren't any now.

In the year since those remarks, Mr. Thomas has gone full circle on what he thinks his agency should be doing. He testified before my colleague, Representative Gus Hawkins, who chairs the Committee on Education and Labor, that:

"I do not support the use of goals and timetables." [Hearing, sec. 14, 1984, p. 9]

Ironically, in 1983, that same EEOC Chairman had written to the Attorney General to warn that the use of goals in Federal employment was required, had been required for sometime and that the EEOC "strongly protested" the action by the Justice Department, which:

"Constitutes not only a sharp departure from acceptable standards of inter-agency protocol but was an action taken in derogation of this agency's statutory designation as the chief interpreter of Title VII of the Civil Rights Act of 1964, as amended."

Thomas concluded the January 26, 1983 letter to William French Smith with the comment that "every member of the [EEO] Commission finds this unilateral action by the Department of Justice deplorable." [Hawkins hearing, p. 65]

Obviously, Mr. Thomas has conveniently chosen to forget his own remarks as well as his written statements.

Initially, when I introduced H.R. 781, it was to provide subpeona power to the EEOC so that the agency would have the necessary legal muscle to ssek full compliance.

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However, subsequent remarks by Chairman Thomas and members of his Commission made me question whether the agency would use this power if Congress did indeed provide it.

Today I am introducing an amendment in the form of a substitute which I think would be easier to administer and to implement, without lessening the same desired effect.

By substitute amendment would provide that:

1. If an agency has not provided the mandatory employment goals and timetables as part of the annual affirmative action statement by the conclusion of the fiscal year on September 30, the EEOC would be empowered to initiate civil action in U.S. District Court to compel that any department, agency or appropriate unit provide the data.

2. If the EEOC does not take appropriate legal action by October 31 of that same calendar year against any agency which has not filed the required information, then an employee of that department, agency or unit could seek legal action in district court, or a labor organization on behalf of that employee may undertake the necessary legal action.

I believe these provisions may be less cumbersome than going to the Comptroller General or wading through the lengthy delays that could be incurred in the earlier proposal for the subpoena process.

We need action and we need it now. In a country of 238 million people, we simply cannot allow each person to decide what laws they will obey and which they will disregard or we would have complete chaos.

In closing, let me urge this subcommittee to review the clear distinctions between the goals and timetables prescribed by the laws versus the emotionally volatile word of quotas which the Justice Department and the White House keep trying to equate with goals.

Let us set the record straight on these words with a definition provided by the Department of Labor during a previ ius Republican administration:

"Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work." [Memorandum of March 23, 1973 by the Departments of Justice and Labor, the EEOC and the Civil Service Commission]

Quotas, on the other hand, require hiring a fixed number or percentage. Neither the EEOC nor any Federal statutes require quotas in employment. Only the courts are empowered to order quotas—based on a finding of noncompliance with the federal laws, and the quota must be temporary, aimed at a definite percentage, and considered to be the best way to redress a previous wrong.

Finally, let me state for the record that the Supreme Court's decisions in *Baake, Weber* and *Fullilove* all strongly indicate that race-conscious remedies—including goals and ratios—are a lawful means for dealing with the effects of prior discrimination.

I can believe that the world is square or that the ocean is red or that today is Saturday—but my own opinion, no matter how deeply held, does not alter any of those factual realities.

The same concept applies to the goals and timetable requirements which are currently part of the law. Anyone can disagree with them but, until they are changed by the courts and the Congress, they are the law, and each federal agency head has an ethical obligation to provide that data under his or her oath of office, and the EEOC has an obligation to enforce the tenets of that law as long as it remains on the books.

Mr. Chairman, I thank you for the opportunity to appear before you today.

U.S. DEPARTMENT OF EDUCATION,
June 12, 1985.

Hon. CARDISS COLLINS,
Chairwoman, Subcommittee on Government Activities and Transportation, Committee on Government Operations, House of Representatives, Washington, DC.

DEAR MRS. COLLINS: I am responding to your letter of May 28 requesting comment on the findings and recommendations contained in the Sixth Report of the Committee on Government Operations, "National Endowment for the Humanities and the Equal Employment Opportunity Commission," (EEOC) based on a study by the Government Activities and Transportation Subcommittee.

The Committee found that in 1984 the National Endowment for the Humanities "chose to take issue with the concept of affirmative guidelines" (pp. 20–21). As I

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have stated many times, I support the concept of affirmative action and I instituted affirmative action policies and expanded existing affirmative action efforts at the Endowment when I served as its Chairman. I have also done so at the Department. I thus take issue with the Committee's finding on this point.

The Committee also found "shortcomings in the agency's (NEH's) stated strategy for achieving compliance with the Federal civil rights laws through aggressive recruitment" (p. 21). As I testified before the Subcommittee, I believe that the record of the Endowment in this area during my tenure was exemplary. Moreover, during this period I also achieved a significant reduction in staffing levels at the Endowment without adverse effects on women and minorities at the agency.

The Committee recommends I confirm that the Department of Education will submit to EEOC "the required materials in a timely fashion" (pp. 21-22). While I am Secretary, the Department of Education will provide all legally required materials to the EEOC in a timely fashion.

Let me state once again my strong commitment to vigorous enforcement of all civil rights laws and regulations and to the promotion of fair and equitable treatment of all individuals without regard to race, sex, religion, national origin, age, or handicapped status.

Sincerely,

WILLIAM J. BENNETT, *Secretary.*

FEDERAL TRADE COMMISSION,
Washington, DC, June 20, 1985.

Hon. CARDISS COLLINS,
Chairwoman, Subcommittee on Government Activities and Transportation, Committee on Government Operations, House of Representatives, Washington, DC.

DEAR CHAIRWOMAN COLLINS: Thank you for your letter of May 7, 1985 to which this is in response.

As your report notes at pages 11-12, the Federal Trade Commission "is currently involved in implementing the equal employment directives of a court order," which expires on November 10, 1985. That order resulted from the court's approval of a revised settlement agreement resulting from a 1976 class action lawsuit alleging racial discrimination in hiring practices in a prior Commission. The order does not require the Commission to establish goals or time tables and in fact eliminated those requirements which were found in the original order of settlement.

Notwithstanding the fact that the *Bachman* order does not require goals or time tables, the Commission and I personally are committed in practice and principle to promoting opportunities for equal employment for all people. As part of that commitment, I have advocated repeatedly a program of affirmative recruitment of minorities at the Commission. I am enclosing a copy of my statement on that subject. In addition, I meet regularly with *Bachman* class members to discuss what is being done to increase minority representation among employees at the Commission. While I recognize our task remains unfinished, I believe our record disputes any notion that our efforts have not met both the letter and spirit of the law. By way of example, in fiscal year 1984 the percentage of offers to minority law clerks was greater than their representation among those graduating from law school. As of September 30, 1984, minorities comprised 36% of the total Commission workforce. A complete statistical analysis of minority professionals' employment at the Commission is contained in the 1984 Annual Report filed by the independent Coordinator with the court in the *Bachman* matter, a copy of which is enclosed.

I do not believe the Commission can be ordered to establish hiring goals or time tables by the majority report of a legislative subcommittee without contravening the doctrine of separation of powers. Moreover, it is respectfully submitted that the Equal Employment Opportunity Commission does not, as a matter of law, possess the authority to compel any agency to submit such information. The Commission not only subscribes to the views expressed by the Department of Justice on the law in this matter but has concluded independently that the law does not require this Commission to comply with the EEOC request.

For the foregoing reasons, the Commission respectfully declines to furnish the information sought by the first recommendation of your report.

Sincerely yours,

JAMES C. MILLER III, *Chairman.*

Enclosure.

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STATISTICS ON DEPARTMENT OF EDUCATION

GS level	Men	Women	Total
GS–1 thru 8	293	1,362	1,655
GS–9 thru 12	771	995	1,766
GS/GM 13–15	1,017	441	1,458
SES	58	15	73
Total employees			4,952

Statistics provided by Jim Pirius, Dept. of Education, 245–8233.

FEDERAL TRADE COMMISSION

MEMORANDUM

To: Managers and Supervisors.
From: James C. Miller III, Chairman.
Subject: Equal Employment Opportunity and Affirmative Action.

On September 24th, I met with *Bachman* class members and had a very useful exchange of views. The issues and ideas we discussed reinforced by conviction that effective human resource management promotes equal employment opportunity and vice versa.

In furtherance of my commitment to excellence in human resource management at the Commission, I want to establish four management objectives for Fiscal Year 1985.

First, you should review your human resource management critical element and performance standards with your supervisor to ensure that it includes the specificity that other substantive elements include. Also, you should verify that your accomplishments under the critical element can be appraised. For example, performance standards should include specific initiatives to: (a) identify and encourage qualified employees—minorities as well as non-minorities—to apply for higher-level positions; and (b) use the performance appraisal system to identify developmental needs and to provide candid feedback to employees.

Second, you will be evaluated carefully on your performance of the human resource management critical element. The fulfillment of equal opportunity and affirmative recruitment objectives will be reviewed with the same attention given to performance in case-related areas. I intend to recognize supervisors and managers who excel in human resource management.

Third, to help supervisors and managers develop their skills in the performance evaluation area, we will provide special training courses for supervisors. I am convinced that effective performance evaluations, including frank feedback and coaching, are essential to effective management.

Fourth, you should conduct mid-year performance reviews with your employees to insure they have a clear idea of how well they are performing. You should conduct these reviews on schedule and use them to reinforce quality performance, to isolate problems, and to set developmental goals.

If the Commission is to achieve the objectives we have set, all of us must be creative and aggressive in the steps we take during the year. I ask that you give these issues your highest priority and explore new approaches, such as intraoffice rotations, to ensure that each employee is given an opportunity to attain his or her highest potential.

Attached is a copy of my memorandum to *Backman* class members. I welcome any additional suggestions that you might have, and I urge your full attention to our human resource management goals.

Attachment.

NATIONAL ENDOWMENT FOR THE HUMANITIES,
Washington, DC, May 28, 1985.

Hon. CARDISS COLLINS,
Chairwoman, Government Activities and Transportation Subcommittee, Committee on Government Operations, Rayburn House Office Building, Washington, DC.

DEAR CHAIRWOMAN COLLINS: This is in response to your letter of May 7, 1985 asking the Endowment to comment on the findings and recommendations contained in the Sixth Report by the Committee on Government Operations concerning "The National Endowment for the Humanities and the Equal Employment Opportunity

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Commission." Since not all of the findings and recommendations pertain to the Endowment, I have only a few brief remarks to make.

The Committee states that it found "shortcomings" in NEH's "strategy for achieving compliance with Federal civil rights laws through aggressive recruitment." I think the record will show that there are no "shortcomings" in our efforts to recruit minority and women employees. HEH casts a wide net in recruiting for mid- and senior-level professional job vacancies and specifically targets minority and women applicants by placing job announcements in a number of minority publications. In addition, NEH has expanded its mailing lists for job announcements to include institutions with traditionally minority populations. We take our obligation to recruit seriously, and should not be faulted on that score.

The Committee recommends that NEH, along with the Department of Justice and FTC, submit to EEOC "goals and timetable data" regarding "recruitment, hiring, and internal promotions." As you know, Dr. Bennett in his letter of January 16, 1984 to Clarence Thomas of the EEOC and in his subsequent testimony before your Committee strongly opposed the principle of setting racial goals for hiring. I endorse Dr. Bennett's position. It will remain NEH policy neither to favor nor slight anyone because of race, color, national origin, religion, or gender. Since we refuse to judge people on the basis of sex or race, we will not establish "goals and timetables." Moreover, given the opinion of the Justice Department and the testimony of Mr. Devine and Mr. Thomas at your hearings, we are even further convinced of the legality—as well as simple justice—of our position. Nor do we think such "goals and timetables" are warranted given NEH's admirable record in hiring and promoting minorities and women.

The Committee also recommends that appropriations be rescinded for agencies that are "not in compliance with data submission requirements as mandated by Section 717 of Title VII of the Civil Rights Act of 1964, as amended, and by Section 310 of the Civil Service Reform Act of 1978." Since our only "offense" is that we have refused to discriminate on the basis of race or sex, we think this action would be most unfortunate.

The other recommandations of the report do not pertain specifically to NEH but are concerned, instead, with certain legal issues involving EEOC's guidelines, regulations, and enforcement powers. Since these issues are only indirectly relevant to the Endowment, I should not comment upon them. I would like to say, however, that the dissenting views of the Committee's minority members raise serious questions about these issues and about the content of the report, issues that should be addressed by the Congress.

As is customary with Congressional correspondence of this nature, copies of this letter will be made available to other interested Congressional committees.

Sincerely yours,

JOHN AGRESTO, *Acting Chairman.*

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington DC, July 22, 1985.

Hon. CARDISS COLLINS,
Chairman, Subcommittee on Government Activities and Transportation, Committee on Government Operations, House of Representatives, Washington, DC.

DEAR MADAM CHAIRWOMAN: This letter responds to your correspondence to the Attorney General wherein you requested the Department to review the investigative report entitled "The National Endowment for the Humanities and the Equal Employment Opportunities Commission."

On July 23, 1985, the Subcommittee on Employment Opportunities of the House Committee on Education and Labor will be holding a hearing on this subject matter. Acting Assistant Attorney General W. Lawrence Wallace will be representing the Department. Enclosed is a copy of the Department's statement which has been submitted to the Subcommittee on Employment Opportunities.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.
(By) DIANE E. TEBELIUS,
Special Assistant.

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Mr. MARTINEZ. Thank you, Mrs. Collins, and thank you for your efforts in monitoring this extremely important area of civil rights. Thank you for appearing before us today.

Before I ask you to join us on the rostrum here, I would like to ask you one question. If three agencies, and perhaps four this year, interpret the law by their own standards, and because they disagree with the law, while 106 other agency heads do not, what happens to our system of government and what happens to the role of Government as to equal employment opportunity?

Mrs. COLLINS. First of all, you don't have a Government applying the laws equally. You have people ignoring the laws. That means the law is invalid. I mean, if people just ignore the law, you don't really have a law. You don't have any enforcement power and you don't do anything with it.

What happens to equal opportunity in our Government to be fair? It goes right down the drain.

Mr. MARTINEZ. When we do not obey laws, what do we have, an anarchy?

Mrs. COLLINS. I believe we have an anarchy.

Mr. MARTINEZ. Thank you.

Mr. Hawkins?

Mr. HAWKINS. I have no questions.

I would like to commend Mrs. Collins on an excellent analysis of the situation. I don't think anyone would disagree with what you have said. However, we still have three or four senior Government officials continuing to disobey the law.

Mrs. COLLINS. That's right.

Mr. HAWKINS. I don't think we will get to consideration of your bill in this session of Congress, but certainly we need to get started. It is obvious that even if your proposal passed both Houses, the President would veto it because he nominated the very individuals that your proposal is designed to reach. So it just seems to be an outright conspiracy to disobey the law and I think it reaches all the way up to the White House. It is not difficult to understand why we're in such confusion and chaos, not only in this country but around the world.

I commend you on an excellent statement.

Mrs. COLLINS. Thank you, Mr. Chairman.

Mr. MARTINEZ. Mr. Williams.

Mr. WILLIAMS. Mrs. Collins, I too, want to commend you for your statement.

When I first saw your original bill, I was somewhat hesitant to cosign it, even though I agreed with almost all that was in it. However, I was concerned—and my question goes to whether your substitute takes care of this problem—I was concerned that in your original bill you had a provision to withhold the salaries of civil servants who refused to turn over records, and for political appointees who refused to do that you sent their names to the White House. It seemed to me there was a disparity and inequity in treatment between some civil servants and others who were appointed through the political process.

Does your substitute deal with that?

Mrs. COLLINS. It drops the provision altogether, sir.

Mr. WILLIAMS. It drops the provision altogether?

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Mrs. COLLINS. Yes, it does.

Mr. WILLIAMS. That makes the substitute a lot more palatable to me. I think it is a good bill.

Mrs. COLLINS. Thank you.

Mr. MARTINEZ. Thank you, Mr. Williams.

Mr. Hayes.

Mr. HAYES. I don't have any questions. I do want to commend my colleague for having appeared before this committee. You have sort of laid out for the record some of the history of the kind of problems we are faced with today, where we have these kinds of people operating in what I consider to be a violation of the law, and they're still getting away with it.

As you well know, we have been tested in Chicago by a suit of the Justice Department against the city of Chicago for its affirmative action program in the upgrading and placement of blacks and other minorities in the police and fire department.

Just last week, or the week before last, William Bradford Reynolds appeared before another committee and when asked the question about the purpose of this litigation of the Justice Department against the city of Chicago, what they hoped to accomplish, the purpose to eliminate some of the minorities that had been hired by these two departments, he said that was not the purpose. He said what they wanted to do was to set goals and timetables for the future. With these kind of people heading up the department, I shudder to think what will happen if they get their way. So we have got our work cut out for us in Chicago.

Mrs. COLLINS. The gentleman is absolutely right. One of the reasons why I feel that this legislation is so important is because, when you have the Justice Department of our country holding itself above the law, as was the case when they refused to provide the goals and timetables that were required, then you can't help but have a trickle down effect on what happens in other States and eventually down to other cities.

When you have this kind of thing happening, it is going to impact every single individual in the country. I think your example of what has happened in Chicago is most appropriate at this time because we're seeing its effect already.

Mr. MARTINEZ. Thank you, Mr. Hayes.

Mr. Murphy.

Mr. MURPHY. Thank you, Mr. Chairman.

Thank you, Mrs. Collins. I think you have pointed out some very good factual information that I can tell you I did not know. I know of Mr. Bennett's record, having worked with him in my committee. But I do appreciate your setting forth these items.

Although I come from an area in the country where they don't particularly espouse quotas, I think that the things you pointed out are extremely pertinent, and when we have a law on the books that has been passed by Congress, made by four prior administrations, both Republican and Democrat, we must insist that this administration and all of its appointees adhere to the law, no matter what the law is. If they want to change the law, there is a way to do that. They can't do it unilaterally. I think you pointed out something that many Members of Congress are concerned with.

Thank you very much.

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Mrs. COLLINS. Thank you.

Mr. Chairman, I certainly thank you for the offer to sit with your subcommittee today. However, I have a previous commitment that I have to honor.

Mr. MARTINEZ. Thank you again for being here.

Mrs. COLLINS. Thank you.

Mr. MARTINEZ. Our next witness is Mr. Douglas Bielan, Director of the Public Sector Programs Division, Equal Employment Opportunity Commission.

While Mr. Bielan is being seated, I would like to make two announcements. First, the prepared statements will be entered in the record in their entirety, and the second is to remind the subcommittee members that under House committee rules each member is limited to a 5-minute questioning period of the witness.

With that, would you proceed.

STATEMENT OF DOUGLAS BIELAN, DIRECTOR, PUBLIC SECTOR PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. BIELAN. Good morning, Chairman Martinez, and members of the subcommittee.

I appreciate the opportunity to appear before you and to respond to any questions that you may have regarding the Commission's Federal enforcement activities. In the interest of time, I have submitted a complete statement for the record, but will read a summary of that statement, again because of time constraints.

I understand the subcommittee has requested EEOC's testimony on the Commission's responsibility under section 310 of the Civil Service Reform Act, section 717 of title VII, which requires that all Federal agencies develop equal employment opportunity programs, EEOC's record with respect to processing of Federal sector EEO complaints, and lastly, the Commission's position on H.R. 781, introduced by Representative Collins.

If I may, I would like to address H.R. 781 first. As you know, H.R. 782 proposes to grant EEOC subpoena power— although with this morning's testimony, that is changed—to strengthen the authority of EEOC to enforce nondiscrimination policies of the Federal Government. The Commission has not taken a position on H.R. 781 and, consequently, I have nothing to report on H.R. 781, except to note the July 25, 1984, testimony of Chairman Clarence Thomas of EEOC before the House Subcommittee on Government Activities and Transportation. I have attached a copy of the chairman's previous testimony to my statement.

With section 717 of title VII of the Civil Rights Act of 1964, as amendment, and section 301 of the Civil Service Reform Act of 1978, Congress has obligated Federal agencies to develop and carry out affirmative employment programs. At the same time, Congress has given EEOC authority to issue directives to agencies on how to fulfill these affirmative employment requirements and responsibilities, and has requested agencies to comply with EEOC's instructions.

As the principal enforcement agency for protecting individual rights, the EEOC has a unique responsibility for protecting the rights of Federal Government employees. The Commission provides

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leadereship and guidance to agencies in the executive branch on all aspects of Federal EEO programs. Pursuant to the authority under these statutes, EEOC assumed oversight responsibility in January of 1979 for EEO efforts in the Federal Government. Since 1979, EEOC has had to establish effective but uniform methods and systems to carry out its mandate, while at the same time it has continued to study procedures and requirements applicable to EEO and affirmative employment programs.

In the Federal sector effort, with a focus on 717 of title VII, the Commission has approved management directive 707 in 1981 which required Federal agencies to set up 5-year affirmative action plans, fiscal year 1982 through fiscal year 1986, with goals and timetables. In addition, a new 707 appendix B with 1980 census data was issued in 1983 to provide agencies with more effective statistical data for monitoring their affirmative employment efforts. In 1983, the Commission also passed management directive 707A, which mandates yearly accomplishment reports on a series of uniform formats of agency affirmative employment efforts.

This reporting format was approved initially for 1 year by GSA and then was reissued for the rest of the current cycle. MD-707A gives extensive guidance to agencies in preparing affirmative action accomplishment reports and affirmative action plan updates. Together, with MD-707 and MD-707 appendix B, it forms the basis for Federal sector program activities in the area of affirmative employment programs for minorities and women.

EEOC has worked closely with other Federal agencies to develop these programs. As a result of these efforts, we have increased compliance with directives from 45 percent in fiscal year 1981 to 99 percent by the end of fiscal year 1984.

EEOC is responding to more requests from agencies for technical assistance, and agencies are now required to complete standardized annual reports on plan progress. This information will allow the Commission to chart the direction and progress of the Government's equal employment and affirmative employment efforts in a more timely manner.

In 1984, the EEOC issued its first annual report, the fiscal year 1982 annual report, on the Status of Minorities and Women in the Federal Government. This deals obviously with regard to minorities and women in the Federal sector. EEOC, in its efforts to reduce the burden on Federal agencies, continues to review and reexamine regularly its policies, regulations, and approaches with respect to the enforcement of Federal statutes that bar discrimination in employment.

Accordingly the Commission has been and is currently reviewing its policies in a number of areas. One major area of responsibility of the Commission that we are just beginning to review is our assignment under section 717(b) of the Civil Rights Act of 1964, as amended, to update rules, regulations, directives and instructions to assure that each Federal agency maintains an affirmative program of equal employment opportunity.

It is particularly necessary for the Commission to now examine its policy in this area because EEOC s MD-707, which constitutes the Commission's current instructions to Federal agencies on this subject, applies only through fiscal year 1986. The Commission

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must therefore soon establish and issue to agencies specific rules, regulations, directives, instructions, et cetera, as necessary, to effectively comply with the requirements of section 717(b). The Commission is now reviewing management directive 707.

In addition, EEOC has devised an onsite program review guide to direct Commission Federal affirmative action field and headquarters staff in conducting onsite evaluations of agencies' affirmative employment programs for both field and headquarters installations. The staff guide provides uniform guidance for the review and analysis of agency affirmative employment programs for minorities, women, and handicapped individuals. Approximately 255 reviews of title VII programs of 12 selected agencies were conducted in 1983. In fiscal year 1984, 364 reviews were conducted. Onsite reviews have proven to be one of the most effective tools for ensuring compliance with our directives in this area.

With regard to the committee's inquiry concerning section 310, I provide only a brief overview because the Office of Personnel Management has sole oversight responsibilities for the Federal Equal Opportunity Recruitment Program, or FEORP.

Public Law 95–454, section 310 of the Civil Service Reform Act of 1978, established the Federal Equal Employment Opportunity Program which requires Federal agencies to develop plans and establish specific recruitment programs for minorities and women where low representation in these groups exists in occupational categories and grade levels within their respective agencies. The act requires EEOC to devise guidelines to implement these minority recruitment programs. Agencies were directed to incorporate these recruitment programs into their equal employment opportunity plans mandated by section 717 of title VII of the 1964 Civil Rights Act for submission to EEOC. EEOC's management directive further requires departments and agencies to mail FEORP plans to EEOC for transmission to OPM, which has authority for this program. In coordination with officials at OPM, all FEORP plans received by EEOC have been transmitted accordingly.

I believe it would be remiss in coming before you to testify today if I didn't also address section 501 of the Rehabilitation Act of 1973, as amended. With assurance, I can tell you that there has been definite, significant progress in the employment of handicapped individuals, particularly those with severe, targeted disabilities, in the Federal Government.

Before responsibility for section 501 was transferred to the Equal Employment Opportunity Commission in 1978, there had been a slight downward trend in the numbers of handicapped individuals working for the Federal work force.

EEOC developed management directives with instructions and guidance to agencies which require planning objectives for increased representation of persons with severe disabilities. In 1981, representation of severely disabled persons in the Federal Government was 0.79 percent. Data show that at the end of fiscal year 1984 the representation of persons with severe disabilities was 0.95 percent.

Based on 1970 census data, the U.S. Department of Labor estimates that 5.95 percent of the population which is work force age and able to work is comprised of persons with severe disabilities.

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Handicapped individuals, especially those with severe disabilities, continue to be severely underrepresented in the Federal work force at 0.95 percent. The fact that there has been a 20-percent increase since 1981 in the percent representation of persons with targeted severe disabilities indicates that the affirmative action program, as set out in our management directives, is effective.

We have enjoyed a good working relationship with the Federal agencies. In 1982, 100 percent of the agencies submitted accomplishment reports and program plans for the 501 program. In 1983, three relatively small agencies did not submit reports, and for fiscal year 1984, we are continuing to work with six agencies which have not submitted reports.

In March 1983, EEOC issued management directive 712, which prescribes to Federal agencies instructions, procedures and guidance for continuing comprehensive programs to facilitate equal employment opportunity for handicapped individuals. The comprehensive programs that are to be established and documented will encompass all agency activities related to hiring, placement, and advancement of handicapped individuals.

At the end of this month we will conduct our first pilot onsite review of an agency's headquarters implementation and integration of management directive 712 into its management systems. The primary purpose of the onsite review is to provide technical assistance and make recommendations to increase employment opportunities for handicapped individuals and improve management directive 712 administrative implementation.

EEOC has been conducting onsite reviews of agencies' field installations since fiscal 1982. Almost 600 section 501 reviews have been conducted. The Commission continues to provide extensive and ongoing technical assistance to Federal agencies on implementing their affirmative action programs. EEOC's management directives are helping agencies to make improvements in their programs because they provide detailed instructions and guidance for establishing, implementing, and monitoring their efforts.

Affirmative action accomplishment reports and plan updates, as well as onsite program reviews, have enabled EEOC to more effectively identify technical assistance needs and track progress made in the employment of women, minorities, and handicapped individuals in the Federal Government.

Our agency also has responsibility for the management of the administrative hearings which are conducted by EEOC attorney-examiners throughout the country. The hearings occur upon complainant's request after the complainant's own agency has investigated EEO allegations. The public sector programs provide technical and legal guidance to field attorney-examiners, private attorneys, EEO headquarters management, and other Federal agency staff, employee organizations and Federal employees and the general public. The 86 EEOC attorney-examiners are stationed in the Commission's 22 district offices. In fiscal year 1984, we received 4,991 requests for hearings. In that same year, 4,930 cases were closed, for an average of 67.3 closures per examiner. In the first half of 1985, we received 2,277 requests for hearings, and in the same period, 2,337 cases have been closed, leaving 3,753 open cases. The average closure rate for fiscal year 1985, based on projections

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of the work force for the first half of 1985, is 66.6 closures per examiner.

During fiscal year 1984 and the first part of fiscal year 1985, the hearings program has seen a reduction in caseload throughout the country, which results from a higher productivity among the attorney-examiners by a better distribution of cases throughout the country and from the hiring of 10 additional attorney-examiners for our district office hearing units.

The Commission has taken several other steps during fiscal year 1984 and 1985 to assure greater case processing efficiency.

The Commission approved the implementation of a "decision from the bench" program, in which attorney-examiners can issue their recommended decisions immediately at the conclusion of a hearing in lieu of issuing them after receipt of a transcript. We find this program saves time and benefits both the complainant and the agency. We are very pleased thus far with the results of the program.

We have also developed a comprehensive field office quality control program for implementation in various hearing units in fiscal year 1985. We are finding that through the quality control reviews we are having a substantial impact on work management and quality of the discrimination decisions issued by the field district office hearing units. In addition, EEOC, in the process of issuing several new management bulletins and directives providing guidance to agencies in Federal EEO complaint processing, hopes to issue revised complaint processing regulations that would streamline the current multistepped administrative process, making it less costly, more expeditious, and fairer for all parties.

We anticipate continued progress in the hearings program due to the "decisions from the bench" program, the high productivity and quality of the attorney-examiner decisions, the issuance of additional technical and legal guidances on Federal EEO complaint processing, and new regulations to streamline the entire complaints processing system.

The committee has also expressed an interest in EEOC's Office of Review and Appeals. The Office of Review and Appeals has been reorganized and increased staffing and resources have been allocated to ORA which administers the appellate portion of the Federal complaints system. Under the Director of ORA, the number of attorney positions allocated to the office has been increased from 21 attorneys to 28 attorneys. Additionally, a new division has been created within ORA to handle administrative matters, control of cases, and compliance matters.

Another special unit has also been organized to work on improving quality of decisions issued. This unit reviews certain decisions on a selective basis, researches complicated issues, or areas where the Commission has not yet established clear precedent, develops policy guidance, and conducts training for the legal staff.

Thank you, Chairman Martinez, and Members of the subcommittee, for this opportunity to testify before you today.

[The prepared statement of Douglas Bielan, with attachments, follows:]

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PREPARED STATEMENT OF DOUGLAS BIELAN, DIRECTOR, PUBLIC SECTOR PROGRAMS, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Good morning, Chairman Martinez, and members of the Subcommittee. I appreciate the opportunity to appear before you to respond to any questions that you may have regarding the Commission's Federal Enforcement Activities. I understand that the Subcommittee has requested the EEOC's testimony on (1) the Commission's responsibility, under Section 310 of the Civil Service Reform Act; and Section 717 of Title VII, which requires that all federal agencies develop affirmative programs of equal employment opportunity; (2) the EEOC's record with respect to the processing of federal sector EEO complaints; and (3) the Commission's position on H.R. 781, introduced by Representative Cardiss Collins.

Because I have the least to say about H.R. 781, I will address that first. The Commission has not taken a position on H.R. 781. Consequently, I have nothing to report, except to note the July 25, 1985, testimony of Clarence Thomas, Chairman of the Equal Employment Opportunity Commission, before the House Subcommittee on Government Activities and Transportation. That Subcommittee is chaired by Representative Collins. I have attached a copy of Chairman Thomas' testimony to my statement.

SETTING THE EXAMPLE FOR THE FEDERAL GOVERNMENT

As the principal enforcement agency for protecting individual rights, the EEOC, has a special responsibility for protecting the rights of Federal Government employees. The Commission provides leadership and guidance to agencies in the Executive Branch on aspects of all Federal EEO Programs.

A long-term plan to reform the Federal EEO complaints processing system has also been initiated. It will centralize the present system within the EEOC, which is the agency with greatest Title VII expertise. The Commission, responsible for overseeing Federal EEO efforts since January 1979, has found the current system, which requires the agency charged with discrimination to investigate the allegation and make a decision on the dispute, to be ineffective, unnecessarily time-consuming, and ten times more costly than the processing of private employer charges. The new streamlined, centralized system should reduce problems occurring from conflicts of interest, be less costly, more efficient and effective.

PUBLIC SECTOR PROGRAMS

Not to discuss the current system—The Equal Employment Opportunity Commission (EEOC) implemented a headquarters reorganization in October 1982. Public Sector Programs (PSP) was created within the new Office of Program Operations, combining the functions of the old Office of Government Employment and the Hearings and Technical Guidance Division of the old Office of Field Services.

PSP provides leadership and guidance to Federal agencies in the Executive Branch on all aspects of the Federal equal employment opportunity program in furtherance of Section 717 of the Civil Rights Act of 1964, as amended; Section 501 of the Rehabilitation Act of 1973, as amended; Executive Order 11478, as amended by Executive Order 12106; and the Age Discrimination in Employment Act of 1967, as amended. PSP develops proposed policies and implements approved policies and programs designed to prevent discrimination and assure equal employment opportunity for minorities, women, and handicapped individuals in the Federal sector. PSP also develops guidance establishing responsibilities and standards for hearings on complaints of discrimination in Federal employment and provides technical assistance to EEOC field personnel who provide hearings services to Federal departments and agencies. PSP is responsible for oversight of the complaint system and for development of new regulations for that system.

PSP is comprised of three divisions:

Federal Sector Program Division (FSPD); Handicapped Individuals Program Division (HIPD); Hearings Program Division (HPD).

The purpose of this statement is to summarize the history, directions, and initiatives of PSP and its divisions and to explain EEOC's responsibilities and efforts under Section 717 of Title VII.

BACKGROUND

In 1964, Congress enacted basic prohibitions against discrimination in employment in the private sector. However, nothing in Title VII of the Civil Rights Act of 1964 covered Federal employees. In 1972, Congress enacted Section 717.

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This Section of the statute prohibits discrimination by Federal agencies on the bases of race, color, sex, religion or national origin. It also requires the Federal agencies to maintain affirmative programs of equal employment opportunity.

During the next two years, Congress enacted the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, which require Federal agencies to develop and implement affirmative action programs for hiring, placement, and advancement of handicapped individuals and disabled veterans.

Until 1979, the Civil Service Commission (CSC) was responsible for ensuring that Federal agencies developed and implemented equal opportunity programs for minorities, women, and handicapped individuals including disabled veterans. The President's Reorganization Plan No. 1 of 1978 transferred this responsibility to EEOC. On the basis of subsequent interpretation of statutory authority and legislative intent, the Office of Personnel Management (OPM) asserted jurisdiction over equal opportunity programs for disabled veterans. The responsibility was shared with EEOC during FY 1982 and assumed by OPM in FY 1983.

Executive Order 11478 (August 1969) requires Federal agencies to establish and maintain affirmative programs of equal employment opportunity for all civilian employees and applicants for employment. EEOC's regulation at 29 CFR 1613.204(i) requires agencies to submit written national and regional plans of action annually for EEOC review and approval.

Within EEOC, the old Office of Government Employment was responsible for developing programs, policies, standards, guidelines, and procedures for equal opportunity programs. These functions have now been subsumed by Public Sector Programs.

In addition to headquarters staff, the Office of Government Employment had staff attached to 10 EEOC District Offices, one in each Federal Region. Each affirmative action unit in the field had two or three staff persons working for a field manager who reported directly to the Office of Government Employment.

In December 1980, the Commission voted to decentralize routine administration and supervision of the affirmative action field program and attach these functions to the 10 District Offices. This was done so that onsite supervision of staff could be performed by the District Directors. Responsibility for oversight, coordination, standard-setting, and technical guidance remained at headquarters in the Office of Government Employment. This dual reporting arrangement was inherited intact by Public Sector Programs.

In Section 717 of Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964 as amended and Section 310 of the Civil Service Reform Act of 1978, Congress has obligated Federal agencies to develop affirmative programs of equal employment opportunity. At the same time, Congress has given EEOC authority to issue directives to agencies on how to fulfill these affirmative employment responsibilities, and has required agencies to comply with EEOC's instructions.

As the principal enforcement agency for protecting individual rights, the EEOC has a unique responsibility for protecting the rights of Federal Government employees. The Commission provides leadership and guidance to agencies in the Executive Branch on aspects of all Federal EEO Programs.

EEO-MD-707 (January 9, 1981; modified by memorandum of June 15, 1981) instructed Federal agencies to develop, submit, and implement equal employment and affirmative action plans for minorities and women for the period FY 1982 through FY 1986. With this directive, EEOC initiated a multi-year affirmative employment process. A single plan was to be implemented over a five-year period. The instructions, as amended by memorandum, gave detailed guidance to agencies, while permitting flexibility so that agencies could conform affirmative action planning and data collection and analysis with actual organizational configurations and existing management accountability and budget systems.

THE REQUIREMENTS OF EEO-MD-707

Federal agencies and their major operating components and field installations are required to develop plans establishing long-term (five-year) goals and annual goals for occupations in which there is underrepresentation of a particular minority group or women. Agencies are to conduct the underrepresentation anaylsis by comparing the actual percentage of representation of each race/national origin group by sex in each employment category with the percent representation of each race/national origin group by sex in the appropriate civilian labor force. Agencies are permitted to use alternative available statistics or a data base other than the local civilian labor force if their recruitment and hiring for a specific occupation is consistently done from a given geographic area.

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EEOC is aware that it may not always be possible for agencies to attain all affirmative employment goals, even with good-faith efforts. Agencies have been encouraged to monitor their programs and adjust them as necessary.

PREVENTION OF SEXUAL HARASSMENT

EEO-MD-707 requires Federal agencies to submit a plan for prevention of sexual harassment in the workplace along with their multi-year affirmative action program plans. Submissions are to include:

Proposed amendments to agency codes of conduct or other policy directives that describe employee rights and responsibilities;

Training courses that will be developed or conducted (including the number of supervisors or other employees to be trained);

Any instructions to agency offices that will accept complaints from alleged victim of sexual harassment; and

Any other publications, directives, or materials issued to comply with OPM's memorandum of December 11, 1979 (announcing that sexual harassment is a prohibited personnel practice) and EEOC's guidelines and instructions for prevention of sexual harassment.

Like other components of the multi-year program plans, action plans for prevention of sexual harassment are to be reviewed at least annually and revised as needed to accomplish the goal of eliminating illegal sexual coercion in Federal sector employment. Agency heads are responsible for compliance with these requirements. Most Federal agencies have submitted plans, and all those received have been accepted.

EEO-MD-707A (August 26, 1983) provided instructions for agencies to use in updating, on an annual basis, their Multi-Year Plans and in reporting, on an annual basis, their accomplishments in affirmative action. Multi-year plans are not static documents. Annual or as-needed [illegible]ting and continuing review and assessment must be built into ongoing pl[illegible] implementation and maintenance. The planning process is to continue until all c[illegible] groups are fully represented in all employment categories.

A distinction, already used in the Federal Equal Opportunity Recruitment Program, was introduced into planning and reporting of affirmative action for minorities and women. Agencies were instructed to indicate how they expect to meet the goals they have set for themselves—through internal movement or through external hire. This distinction allows agencies to plan and achieve goals (through internal movement) even if they are not in a position to hire new government employees.

The directive indicates that agencies are to update their plans and submit reports as follows:

Accomplishment reports are to be submitted on an annual basis.

Annual goals in succeeding years are to be based on expected vacancies and the determinations of underrepresentation made as part of the Multi-Year Plan. Where there has been a significant change in the make-up of a particular category or series, new determinations of underrepresentation are to be made.

Plans are to be updated at least annually as new information becomes available to agencies on barriers to equal employment opportunity in staffing/recruitment/employee development procedures and requirements.

Agencies are required under the Civil Service Reform Act to provide for EEO performance appraisal of employees in the Senior Executive Service and the Merit Pay System. Agencies also are responsible for assuring satisfactory EEO performance by all supervisors. EEO-MD-707 advises agencies that multi-year plans should be supported by manager and supervisor actions to accomplish related objectives.

An agency self-monitoring system is critically important to successful implementation and maintenance of a multi-year plan. Actions assigned to various officials are to be monitored for accomplishment and effectiveness. Even a carefully-designed plan may result in no action if monitoring and evaluation do not occur. Similarly, an effective monitoring system without an effective plan and program is meaningless and may lead to substantial resistance. The multi-year planning process requires thorough and accurate analysis, meaningful and innovative planning and programming, and comprehensive and timely monitoring.

PROGRAM ADMINISTRATION

During FY 1981 and FY 1982, Federal agencies received instructions from EEOC on how to prepare multi-year affirmative action program plans to cover the time period from FY 1982 through FY 1986. In 1983, agencies received instructions for

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preparing accomplishment reports for FY 1982 and for preparing program plan updates.

Reports to Congress and the President are prepared as required by law. These are public reports of Federal affirmative action efforts under Title VII and serve the symbolic purpose of recognizing the efforts of the Federal community in the area of affirmative employment for minorities and women.

In 1983, the Commission also passed Management Directive 707A—which mandates yearly accomplishment reports, on a series of uniform formats, of agency affirmative employment efforts. This reporting format was approved initially for one year by GSA and then re-issued for the rest of the current cycle. MD–707A gives extensive guidance to the agencies in preparing affirmative action accomplishment reports and affirmation action plan updates. Together with MD–707 and MD–707 Appendix B, it forms the basis for Federal Sector Program activities in the area of affirmative employment programs for minorities and women.

EEOC has worked closely with other Federal agencies to develop these programs. The results of these efforts have increased compliance with these directives from 45 percent in FY 81 to 99 percent by the end of FY 1984. EEOC is responding to more requests from agencies for technical assistance and agencies are now required to complete standardized annual reports on plan progress. This information will allow the Commission to chart the direction and progress of the government's equal employment and affirmative employment efforts in a more timely manner.

In 1984, the EEOC issued the first Annual Report (FY '82 Report on Status of Minorities and Women in Federal Government) with regard to minorities and women in the Federal Sector.

The Commission reviews and reexamines regularly its policies, regulations and approaches with respect to enforcement of the Federal statutes that bar discrimination in employment. Accordingly, the Commission has been, and is currently reviewing its policies in a number of areas. In particular, in October 1984, the Commission unanimously voted to review its assignment under Section 717(b) of the Civil Rights Act of 1964, as amended, to issue rules, regulations, orders and instructions to assure that each Federal agency "maintain(s) an affirmative program of equal employment opportunity." It is particularly necessary for the Commission to now examine its policy in this area because EEOC's MD–707, which constitutes the Commission's current instructions to Federal agencies on this subject, applies only through Fiscal Year 1986. The Commission must, therefore, soon establish and issue to agencies, specific rules, regulations, directives, instructions, etc., as necessary to effectively comply with the requirements of Section 717(b). The Commission is now reviewing Management Directive 707.

FEDERAL EQUAL EMPLOYMENT RECRUITMENT PROGRAM

With respect to the Committee's inquiry concerning Section 310, I provide only a brief overview because the Office of Personnel Management has sole oversight responsibilities for the Federal Equal Opportunity Recruitment Program (FEORP). Public Law 95-454, Section 310 of the Civil Service Reform Act of 1978, established the Federal Equal Opportunity Recruitment Program which requires Federal agencies to develop plans and establish specific recruitment programs for minorities and women where low representation of these groups exists in occupational categories and grade levels within their respective agencies.

The Act requires EEOC to devise guidelines to implement these minority recruitment programs. Agencies were directed to incorporate these recruitment plans into their equal employment opportunity plans mandated by Section 717 of Title VII of the 1964 Civil Rights Act for submission to EEOC. EEOC's Management Directive 707 further requires departments and agencies to mail FEORP Plans to EEOC for transmission to OPM which has authority for this program. In coordination with officials at OPM, all FEORP plans received by EEOC are transmitted accordingly.

SECTION 501 OF THE REHABILITATION ACT

I believe I would be remiss in coming before you to testify today if I did not also address Section 501 of the Rehabilitation Act of 1973, as amended. With assurance I can tell you that there had been definite, significant progress in the employment of handicapped individuals, particularly those with severe targeted disabilities, in the Federal Government.

Before responsibility for Section 501 was transferred to the Equal Employment Opportunity Commission (EEOC) in 1978, there had been a slight downward trend in the numbers of handicapped individuals working on the Federal work force.

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[The Commission is processing an increasing number of complaints alleging handicap discrimination by Federal agencies in violation of Section 501 of the Rehabilitation Act of 1973. Our review of these complaints, our communications with other Federal agencies, and the state of judicial caselaw on this subject matter indicates that there are at least two major issues where the Commission's existing regulations are inadequate and further guidance is necessary: (1) the appropriate definition of handicapped individuals who are protected by Federal statutes from discrimination and/or on whose behalf affirmative action is to be undertaken; and (2) the extent to which an agency must accommodate these individuals disabilities.

The Commission's regulations contain a very general definition of "handicapped person." The regulations also require that Federal agencies provide reasonable accommodation to otherwise qualified handicapped applicants and employees, but provide little guidance beyond listing some of the factors that should go into deciding whether a particular accommodation is reasonable and would not impose an undue hardship on the operations of the agency. The Commission is currently reviewing these issues.

Generally, under Section 50L of the Rehabilitation Act, the Commission developed management directives with instructions and guidance to agencies which required planning objectives for increasing representation of persons with severe disabilities. In 1981, representation of severely disabled persons in the Federal Government was 0.79 percent. Data show that the end of Fiscal Year 1984, the representation of persons with severe disabilities was 9.95 percent.

Based on 1970 census data, the U.S. Department of Labor estimates that 5.95 precent of the population which is work force age and able to work is comprised of persons with severe disabilities. Handicapped individuals, especially those with severe disabilities, continue to be severely underrepresented in the Federal work force at 0.95 percent. The fact that there has been a 20% increase since 1981 in the percent representation of persons with the targeted severe disabilities indicates that affirmative action program as set out in our management directives, is effective.

EEO–MC–711 (November 2, 1982) continued the basic policies established in EEO–MD–703 and provided optional reporting forms for internal actions that improve opportunities for handicapped employees: Training, promotions, student employment, upward mobility, and management and executive development programs. Disabled veteran data were eliminated because OPM assumed the role of lead agency for enforcement of Section 403 of the Veterans Act beginning in FY 1983. EEO–MD–711A (October 4, 1983) extends EEO–MD–711 requirements through FY 1986 and makes the optional reporting formats mandatory beinning with the FY 1985 accomplishment report.

EEOC's instructions call for submission of a single agencywide plan and accomplishment report. Local plans are to be developed but they are not to be submitted to EEOC unless specifically requested. Those local plans are to address local implementation of the agencywide plan prepared by agency headquarters.

CRITERIA FOR EVALUATING AGENCY PLANS AND REPORTS

The commission evaluates agency plans and reports for effectiveness. The first evaluation criteria were developed in January 1980 and applied to plans and reports prepared pursuant to EEO–MD–703. Since then criteria have been refined. The evaluation system now in use is described in the FY 1982 Report to Congress. Basically, plans are approved if they include all required elements and if goals are established for an increase in representation of persons with specified severe disabilities. Accomplishment reports are rated satisfactory if representation of persons with specified severe disabilities increases. If not, other issues are considered: the hiring rate and actions other than hiring that have improved employment opportunities for individuals with targeted disabilities. The accomplishments of agencies that show no progress in any of these areas are rated unsatisfactory. Results of the evaluation process are included in an annual report to the Congress.

In March 1983, EEOC issued EEO–MD–712, which prescribes to Federal agencies instructions, precedures, and guidnace for continuing comprehensive programs to facilitate equal employment opportunity for handicapped individuals. The comprehensive programs that are to be established and documented will encompass all agency activities related to hiring, placement, and advancement of handicapped individuals.

At the end of this month (July) we will conduct our first pilot onsite review of an agency's headquarters implementation and integration of MD–712 into its management systems. The primary purpose of the onsite review is to provide technical assistance and make recommendations to increase employment opprortunities for handicapped individuals and improve MD–712 administrative implementation.

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HEARINGS PROGRAM DIVISION

Although EEOC has made several technical amendments to the complaint-processing regulations (to clarify policy on such things as settlement and to provide administratively for backpay and attorney fees, where appropriate), the current regulations are substantially the same as those inherited from the Civil Service Commission. The regulations provide for informal counseling followed by formal filing, agency self-investigation, hearing by an EEOC complaints examiner (if requested), final agency decision thereafter (the examiner's recommendation is not binding), and appeal from the agency decision to EEOC's Office of Review and Appeals (decisions binding on both parties).

Although agencies generally are required to investigate their own complaints, EEOC has reserved the right to take over a complaint investigation if an agency does not complete the investigation within 75 calendar days. EEOC may also require agencies to expedite processing in other ways. Resource constraints have limited EEOC intervention to requiring expedited agency self-investigation.

To date, EEOC's role in the pre-appellate complaint process has been limited to providing technical guidance to agencies and the general public; addressing complaints and inquiries from agencies, unions, complainants, and others; and managing the pre-appellate responsibilities that are currently assigned to the Hearings Program Division.

FUNCTIONAL AREAS (HEARINGS PROGRAM DIVISION)

The Hearings Program Division (HPD) has been divided into two functional areas: (1) complaints and inquiries and (2) hearings program management.

Complaints and inquiries.—HPD provides technical guidance and assistance to Federal agencies, Federal employees, employee organizations, and the general public. Staff also respond to complaints and inquiries concerning specific problems encountered by these constituencies. All guidance and assistance are provided in response to incoming correspondence and telephone calls. Staff assigned to this function receive approximately 300 calls and 100 letters each month. Intake volume has remained fairly constant since the function was transferred from CSC to EEOC in 1979.

Intake has been analyzed to identify problems and propose strategies for addressing them. Although many problems cannot be solved without regulatory reform, progress has been made through issuance of EEOC management directives and EEOC management bulletins.

Hearings Program management.—When responsibility for hearings was transferred from CSC to EEOC in 1979, the primary concerns were establishing temporary operating procedures, issuing guidance (mostly borrowed from CSC issuances), and recruiting and training complaints examiners to conduct hearings. Since then, permanent internal operating procedures have been established (EEOC Order 965), and management directives and management bulletins have been issued to provide guidance to Federal agencies. There are Hearings Units in all 22 EEOC District Offices. Operating statistics are reviewed and analyzed on a quarterly basis. These analyses and visits to field offices enable continuing identification of program needs and problems and systematic program development. For example, a skills training and refinement course was developed and provided for complaints examiners in 1982 and in 1984.

In FY 1984, we received 4,991 requests for hearings. In that same year 4,930 cases were closed for an average of 67.3 closures per Attorney Examiner.

EEOC has been conducting onsite reviews of agencies' field installations since fiscal year 1982. Almost 600 Section 501 reviews have been conducted.

The Commission continues to provide extensive and ongoing technical assistance to Federal agencies on implementing their 501 affirmative action programs. EEOC's Management Directives are helping agencies to make improvements in their programs because they provide detailed instructions and guidance for establishing, implementing and monitoring their efforts. Affirmative action accomplishment reports and plan updates as well as onsite program reviews have enabled EEOC to more effectively indentify technical assistance needs and track progress made in the employment of women, minorities, and handicapped individuals in the Federal Government.

HEARINGS PROGRAM

EEOC also has responsibility for the management of the administrative hearings which are conducted by EEOC Attorney-Examiners throughout the country. The

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hearings occur upon complainant's request after the complainant's own agency has investigated the allegations.

Public sector programs provides technical and legal guidance to field attorney-examiners, private attorneys, EEOC Headquarters management and other Federal agency staff, employee organizations, federal employees and the general public.

The 86 EEOC Attorney Examiners are stationed in the Commission's 22 district offices.

In the first half of FY '85, we received 277 requests for hearings. For the same period, 2,337 cases have been closed, leaving 3,753 open cases. The average closure rate for FY '85, based on a projection of the work of the first half of 1985, is 66.6 closures per attorney examiner.

During FY '84 and the first part of FY '85, the hearings program has been a reduction in caseload throughout the country which results from a higher productivity among the attorney-examiners by a better distribution of cases throughout the country and from the hiring of ten (10) additional attonrey-examiners For our District Office Hearing Units.

The Commission has taken several other steps during FY '84 and FY '85 to assure greater case processing efficiency.

The Commission approved the implementation of a "decision from the bench" program in which the attorney examiners can issue their recommended decisions immediately at the conclusion of the hearing, in lieu of issuing them only after receipt of the transcript. We find this program saves time and benefits the complainant and the agencies. We are very pleased, thus far, with the results of the program. We have also developed a comprehensive field office quality control plan for implementation in various hearing units in FY '85. We are finding that through the quality control reviews we are having a substantial impact on the work management and quality of the recommended decisions issued in the field District Office Hearing Units. In addition, EEOC, in the process of issuing several new management bulletins and directives providing guidance to agencies on Federal EEO complaint processing, hopes to issue revised complaint processing regulations. The new regulations would streamline the current multi-stepped administrative process, making it less costly, more expeditious, and fairer for all parties. We anticipate continued progress in the hearings program due to the "decisions from the bench" program, the high productivity and quality of the attorney-examiner decisions, the issuance of additional technical and legal guidances on Federal EEO complaint processing and new regulations to streamline the entire complaints processing system.

I would like to introduce into the record the Commission's FY '82 and FY '83 reports on complaints processing and a list of accomplishments of the Public Sector Programs since its creation in FY '82.

OFFICE OF REVIEW AND APPEALS

The Committee has expressed an interest in the EEOC's Office of Review and Appeals.

The Office of Review and Appeals (ORA) has been reorganized and increased staffing and resources have been allocated to ORA, which exercises final administrative (appellate) authority over all federal discrimination complaints. Under the director of that office, the number of attorney positions allocated to ORA has been increased from twenty-one (21) attorneys to thirty (30) writing attorneys and two (2) new supervisory attorneys.

Additionally, a new division has been created within ORA to handle the administrative areas, control of cases, and compliance matters. Within the division, another special unit has also been organized to work on improving the quality of decisions issued. This unit reviews certain decisions on a selective basis, researches complicated issues, or areas where the Commission has not established clear precedent, develops policy guidance and conducts training for the legal staff.

The Review and Appeals' Divisions have also been divided and reorganized to handle cases in a more specialized manner. The result is that every decision now undergoes at least three levels of review before issuance.

Compliance Program (Office of Review and Appeals)

The EEOC, determined to have EEO requirements met, has also strengthened its appellate compliance program. Corrective actions resulting from ORA decisions are being more closely monitored, and questions about case interpretation are being resolved with more expediency. The Commission has completed action on approximately 2,000 reports and related correspondence actions, many of which were submitted in FY 83. During the first two quarters of FY 85, over 576 Compliance Reports had been received. EEOC has also requested that submitted reports be made

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more specific so that award amounts and numbers of persons benefitted can be tracked with greater accuracy. An estimated 27 government employees have shared more than $667,908 in benefits during the first two quarters in FY 85.

Office automation (Office of Review and Appeals)

An ORA in-house automated data and information system, that will facilitate the tracking and control of appeals filed, was effected in February of 1985. This project will provide a sophisticated data base useful to the Commission and other agencies, and the capability to avoid duplicate processing, identify related cases, and ensure accurate tracking of cases. The system will greatly expand the amount of case data readily available, and enable ORA to generate quarterly reports to agencies on pending appeals and the status of ORA requests for appeal files and related materials.

Indexes/publishes decisions (Office of Review and Appeals)

The Commission has also entered into a contract with a private publisher, on a "no-cost" basis, to index ORA decisions according to substantive topic areas. The most recently issued decisions (FY's 1982, 1983, and 1984) are to be published first, with subsequent decisions published on a quarterly basis. Older decisions will also be indexed and published, along with a digest of important cases in particular subject areas. Eventually, because the contractor has experience indexing and publishing materials of other agencies, it expects to provide a cross-reference system of ORA decisions within the jurisdiction of these other Federal agencies. To date, more than 6,000 decisions have been indexed and published. This should help agencies identify areas of overlapping jurisdiction in Federal employment, and help to clarify the relevant authority.

Pilot project—expedited case processing (Office of Review and Appeals)

The ORA Director has conducted a study of the operations of several appellate court systems. As a result, ORA has also introduced a pilot program, starting in April 1985, to screen all incoming appeals for jurisdictional defects or lack of investigative information. The major thrusts of the pilot project are two-fold:

1. To screen all cases prior to assignment to an attorney for preparation of a decision;

2. To identify and prepare decisions susceptible to expedited processing.

This will allow some of the cases to be resolved as soon as they are received.

Agency Consulation Program (Office of Review and Appeals)

Another initiative undertaken by the Director of ORA is the agency consultation program. The Office of Review and Appeals recognized that whatever management improvements were made, the appeals processing system could not work at peak efficiency unless a sense of mutual respect and trust was developed between the agencies and EEOC. With this in mind, ORA initiated a program to establish a dialog between the EEOC and the federal agencies and to provide technical assistance on the state of the law and the Commission's regulatory and operations. Of equal importance was the opportunity (on a non-case specific basis), for an agency to provide its perspectives on appeal issues and related problems and matters in the appellate area.

In short, an on-going and working dialog between ORA and the federal agencies had been non-existent. Since the inception of the agency consultation program, 20 multi-agency conferences have been conducted involving over 1,600 representatives from federal agencies. In addition, several agencies have requested and received training from ORA staff for their EEO and/or Employee Relations staffs.

This statement has highlighted the most significant actions recently taken by the Office of Review and Appeals. It is my understanding that the Commission will continue its commitment to do whatever is necessary to make the Office of Reviews and Appeals one of the most effective and efficient offices in the Commission.

STATEMENT OF CLARENCE THOMAS, CHAIRMAN, EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Good afternoon, Chairwoman Collins, and members of the subcommittee. I appreciate the opportunity to appear before you to report on the Commission's efforts to effect compliance with the Federal laws requiring the submission of annual equal employment opportunity plans and the Commission's negotiations with the National Endowment for the Humanities and the Department of Justice on this same issue.

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The Commission has issued directives on affirmative action to agencies based upon, and consistent with, section 717 of title VII of the Civil Rights Act of 1964, as amended. One of those directives requires agencies to make determinations of underrepresentation, to set goals, and to report those goals (among other things) to the Commission annually.

Of the 110 Federal agencies required to submit equal employment opportunity plans, all but four agencies have complied with this requirement. The four agencies that have not complied are the Department of Justice, the Department of Education, the Federal Trade Commission, and the National Endownment for the Humanities.

The Chairman of the Endowment, William J. Bennett, in a letter to me, but delivered to the Washington Post and me, dated January 16, 1984, explained his opposition to making determinations of underrepresentation and to setting goals for FY '83 by stating that the Department of Justice had declared that the Commission exceeds its authority in seeking such information. He also said that he believes that employment policies should not be influenced by race, ethnicity, or gender. My personal views are consistent with Mr. Bennett's on this issue. However, we have viewed our statutory authority and obligations to be at odds with such personal views.

Section 717 of title VII of the Civil Rights Act of 1964, as amended, forbids discrimination on the basis of race, color, religion, sex or national origin. It requires that each department or agency submit a national and regional equal employment opportunity plan. Section 717 also requires that the Civil Service Commission, now the EEOC, "Be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each [Federal] department and agency . . . shall submit in order to maintain an affirmative program of equal employment opportunity". Additionally, and significantly, EEOC has been designated, (pursuant to Executive Order 12067 and the Reorganization Plan No. 1 of 1978), as the principle agency responsible for the formulation of Federal equal employment policy. The EEOC is the lead agency authorized to issue such orders, directives and other instructions as it deems necessary to Federal agencies with regard to their equal opportunity programs. Therefore, there is no legitimate question with regard to the Commission's authority to seek information it deems appropriate.

I also note that the most recent management directive requiring agencies to set goals annually was sent to all affected agencies for comment—including the National Endowment for the Humanities and the Department of Justice—and neither agency made any comments about these requirements.

In 1972, Congress extended the protections of title VII to Federal employment because it found that "minorities and women continue to be denied access to a large number of Government jobs, particularly at the higher grade levels."

In 1978, Congress and then President Carter transferred enforcement of section 717 to the Equal Employment Opportunity Commission because the Civil Service Commission had been "lethargic in enforcing fair employment requirements within the Federal Government." (Message of the President quoted in House Report No. 95–1069, 96th Cong., 2d sess., p.4) but, in making this transfer, Congress did not change the terms of section 717, the legislative directions which accompanied the enactment of section 717, or the Civil Service Commission policies which implemented section 717.

In addition to language in the statute itself, the legislative history of section 717 gives support to the Commission's position that affirmative action includes goals and timetables. In the 1972 amendments, the Senate expressly rejected an amendment which would have prohibited the Secretary of Labor from directing contractors to use goals and timetables. Also, in 1978, Congress passed section 310 of the Civil Service Reform Act, 92 Stat. 1152, 5 U.S.C. 7152 which directs EEOC as well as each Federal agency to "Conduct a continuing program for the recruitment of members of minorities . . . in a manner designed to eliminate underrepresentation of minorities . . . within the Federal service . . ."

While requiring agencies to set standards to reduce underrepresentation the Commission has not required agencies to hire a certain number of minorities and women in the coming year. The Commission has issued detailed instructions to agencies delineating program activities which will facilitate the movement of minorities and women into areas where they appear underrepresented. Those activities include the following sorts of programs:

Broadening the scope of recruitment efforts;

Ensuring that women and minorities receive sufficient training to enable them to move up the ranks;

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Using bridge positions to move minorities and women up from lower-graded job categories into higher-graded job categories for which they would not qualify without the experience gained in those bridge positions; and

Working with high schools, college and universities to seek out and encourage minorities and women to make their careers in Government through summer employment programs and the like.

This committee has also indicated an interest in hearing the Commission's reaction to, and interpretation of, the recent Supreme Court decision in *Firefighters Local Union No. 1784* v. *Stotts*.

The Commission, as a body, has not addressed the impact of the recent Supreme Court decision as of this date.

However, I believe that the ambiguous decision in *City of Memphis* v. *Stotts* is a signal that the Supreme Court is deeply troubled about the validity of affirmative action where there has been no prior finding of discrimination. This decision puts us on notice that sex and race conscious numerical requirements benefiting unidentified victims will be scrutinized closely by the courts where there has been no finding of discrimination. However, as of this date, the Court is not yet prepared to completely close the door on this issue. At this point, one can approach the decision in *Stotts* as signalling either the death knell of affirmative action or as a grace period granted by the Court in which to reexamine the premises underlying affirmative action. During this grace period, we have an opportunity to preserve what is best and most workable in the concept most commonly called affirmative action.

Thank you.

PUBLIC SECTOR PROGRAM ACCOMPLISHMENTS FOR FISCAL YEAR 1983

Renewed MD-707 for the Full 5 Year Planning Cycle Fiscal Year 1982-Fiscal Year 1986.—MD-707, passed by the Commission in January, 1981, mandates agencies set up five year Affirmative Action Plans with goals and timetables. Was initially only approved for one year by GSA.

Issued MD-707A for Years Fiscal Year 1983-Fiscal Year 1986.—MD-707A, passed by the Commission in July, 1983, mandates yearly reports, with a series of uniform formats, on the agencies five year cycle plans. This is extremely important because with this data the Commission can chart the progress of the government's equal employment effort.

Issued On-Site Program Review Guide.—With passage of the On-Site Program Review Guide in Fiscal Year 1983, Commission FAA staff could start technical on-site reviews of field and headquarters agencies' Affirmative Action Efforts. This is the first time reviews have been done for minorities and women since passage of the Reorganization Act in 1978.

Strengthened Federal Affirmative Action Units in Field.—With the help of the Regional and District Directors started to add staff to these units so they could carry out their new responsibilities.

Wrote First Annual Report to the Congress.—EEOC, when it was given lead agency responsibility in 1978, was to report to the Congress annually. This was not done. Our first report was coordinated with the agencies and issued in Fiscal Year 1984.

Held Headquarters Training for FAA Unit Managers.—For the first time Headquarters Training was held for FAA Unit Managers. Also for the first time they were part of the developmental process in reviewing documents before formal agency review.

Developed New Appendix B (1980 Census Data).—In coordination with the Office of Program Research developed new 1980 Census data to be used in setting CLF Goals for Affirmative Action Plan purposes. The Commission was using 1970 data updated to 1979. This old data lead to faulty goal setting.

Mailed FEORP Plans to the Office of Personnel Management.—MD-707 requires Departments and Agencies to mail FEORP Plans to EEOC for forwarding to OPM which has authority of the FEORP Program. In coordination with officials at OPM we forwarded these plans to them. The plans had been sitting at the Commission for two years.

Held Government-Wide Conference on EEOC Management Directices and On-Site Guide.—For the first time Public Sector Programs held a technical government-wide conference to explain to over 300 agency representatives how to use and comply with Management Directives 707A-711—711A-712 and the On-Site Program Review Guide. The Chairman gave the opening address.

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Wrote First Standardized Guidance to Field FAA Units.—In cooperation with Field FAA personnel, developed the first comprehensive guidance to field personnel.

Issued Annual Report on Fiscal Year 1982 Complaint Processing System.—The Commission in November 1982, passed the Fiscal Year 1982 Report on the Federal Complaint Processing System.

Increased Compliance with MD-707 From 45% to 99%.—Working very closely with agencies Public Sector Programs has increased both plan submissions and understanding of EEOC's positions on Equal Employment and Affirmative Employment.

Increased Compliance with 501 Directives from 55% to 100%.—For the first time since Section 501 of the Rehabilitation Act of 1973 was passed by Congress all agencies are in compliance with Management Directices calling for affirmative action approaches for Handicapped Individuals.

Issued Management Directives 711 and 711A.—In the Handicapped Individuals Program Management Directives were previously issued on a yearly basis. Now MD-711-711A provide one set of Directives with mandatory reporting formats good until Fiscal Year 1986. This eliminates yearly inconsistency and allows agencies to computerize data.

Issued Management Directive 712.—This Management Directive passed by the Commission in March 1983, provides a comprehensive program to facilitate Equal Employment for Handicapped Individuals in Federal agencies.

Conducted 255 On-Site Program Reviews of Departmental and Agency Field Facilities—A Record Number.—FAA Units conducted 255 on-site technical assistance reviews. These reviews are extremely valuable in that they provide much needed assistance plus an EEOC presence—as lead agency—in the field.

Developed Handicapped Individuals 501 Information Fact Sheet.—While the EEOC Office of Public Affairs has fact sheets on other programs none was available on the 501 effort. Public Sector Programs developed the data for Public Affairs.

Convened Two Meetings of the Interagency Committee on Handicapped Employment.—Two Meetings were held chaired by Chairman Thomas. The Committee:

1. Reviewed Fiscal Year 1982 Annual Report on Handicapped Individuals.
2. Adopted two reports: (a) "Effects on Reduction-In-Force on Handicapped Federal Employees"; (b) "Criteria for Evaluation of Affirmative Action Programs for Handicapped Individuals."
3. Responded to 2046 written or telephonic inquiries.
4. Approved a proposal to request OMB to provide ceiling exemptions for the hiring of readers, interpreters, and personal assistants.
5. Worked with the White House to issue an Executive Order adding the Secretary of HHS to the Committee.
6. Established work group to coordinate the development of Disability Case Law.

Issued Management Directive 403 on Official Time.—The Commission Passed MD-403 which brings the EEOC interpretation of usage of official time in line with that of the Federal Government.

Issued Interim Regulations on Mixed Cases.—These regulations give instructions on how to process Mixed Cases including elimination of dual hearings. Will save EEOC and other agencies money and processing time.

Issued Management Bulletin 109.—The Bulletin provides further clarification to agencies in processing Mixed Cases. Answered some questions raised by agencies.

Hired 10 Additional Hearings Examiners.—In an effort to reduce the inherited backlog 10 additional examiners were hired, bringing the total to 86.

Instituted Pilot Program—Decisions from the Bench.—The Pilot Program was started in 3 offices and then expanded to 9 offices. Decisions may be verbal in simple issue cases.

Held 1,657 Hearings reached 4,499 Settlements.

Developed Quality Assurance Program for the Hearing Program to be Implemented in Fiscal Year 1984.

Responded to over 7,113 calls for Technical Assistance. (Field not included.)

Developed Options Papers on Reform of the Federal Complaints Processing System.

PUBLIC SECTOR PROGRAMS ACCOMPLISHMENTS FOR FISCAL YEAR 1984

Implemented a Field On-Site Review Program for Minorities and Women.—For the first time since EEOC received lead agency authority in 1978 PSP directed regional Federal Affirmative Action (FAA) Units to implement an extensive on-site visit program for 12 targeted federal agencies.

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Conducted 365 On-Site Program Reviews on Agency Field Installations A Record Number.—FAA Units conducted a record 365 on-site reviews of agency field facilities throughout the United States.

Issued FY '82 Federal EEO Pre-Complaint Counseling and Complaint Processing Report.—Wrote and had printed FY '82 Report on Complaint Processing. This marked the first report to be professionally printed, and only the second report ever issued. Reports are now being issued annually.

Completed FY '83 Federal EEO Pre-Complaint Counseling and Complaint Processing Report.—Wrote, circulated for coordination (under 12067) and forwarded to the Commission the FY '83 Report.

Issued FY '82 Report on the Employment of Minorities, Women, and Handicapped Individuals in the Federal Sector.—The first report ever issued on Minorities and Women and the first combined report (including Handicapped Individuals Program) ever issued. Sent to all federal agencies.

Drafted and Sent to the Federal Agencies for Comment a Management Directive on Priority Consideration.—Directive was developed to combat the continuing misuse of the provisions in Priority consideration.

Developed Revisions of 29 CFR 1613 and Coordinated the Revisions within the Commission.—Developed new 1613 procedures in our efforts to streamline existing complaint processing regulations.

Developed New Regulations to be 29 CFR 1614 to Centralized Federal EEO Complaint Processing within EEOC.—Developed new draft regulations that would centralize the investigation of federal EEO complaints into the Commission.

Issued Appendix B of EEO-MD-707 Containing Revised and Updated 1980 Census Data to be used with MD-707.—In coordination with the Office of Program Research developed 1980 Census Data for dissemination to all federal agencies. Agencies had been using 1970 data.

Developed a Staff Guide for use of Public Sector Programs' Staff and Field Federal Affirmative Action Units.—Developed first comprehensive staff guide for field and headquarters personnel. For the first time field staff will have uniform guidance in conducting program.

Reissued Management Directive 707.—Management Directive 707 was never issued properly, contained numerous errors and was confusing. Reissued MD-707 in proper management directive format with clear precise instructions.

Issued Management Directive 711A.—Issued MD-711A containing instructions to federal agencies on submissions of accomplishment reports and program updates for FY '83-FY '86.

Developed Training Module for MD-712.—Narrative, viewgraphs, and workshop materials for training federal agency personnel were prepared and modules distributed to FAA Units.

Convened Meeting of Interagency Committee on Handicapped Employees (ICHE).—The 21st meeting of the ICHE was held in October 1983. Meeting was chaired by Chairman Thomas. Members adopted a report and discussed other concerns and issues.

Renewed Affirmative Employment and Complaints Reporting Requirements for FY '84-FY '86.—In coordination with GSA (NARS) renewed MD-707A and MD-202 to conform to planning cycle. (FY '84-FY '86)

Drafted Equal Pay Act Procedural Regulations for Federal Sector.—For the first time drafted a precise set of procedural regulations to cover the Equal Pay Act administration in the Federal Sector.

Co-sponsored Symposium at Gallaudet College "Perspectives on Employment of Handicapped Individuals.—For the second consecutive year Public Sector Programs participated in planning and conducting a national symposium on employment of handicapped individuals. Over 250 federal agency representatives were in attendance.

Provided Training for 86 Complaints Examiners.—For the first time in 5 years all EEOC Complaints Examiners were brought into Headquarters for comprehenasive training. Examiners from CIA and NSA were also included.

Responded to 7,256 Calls and Written Inquiries for Technical Assistance.

Provided Training for all FAA Field Staff.—All FAA personnel were brought into Headquarters for a three day Seminar to improve coordination and skills in light of requirements in PSP Management Directives. This was the first time all personnel had come to Headquarters for training.

Implemented a Full Program of On-Site Field Visits for Minorities and Women.—On-site visits were conducted in the 717 (Minorities and Women) program for the first time since the reorganization of 1978.

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Stengthened Relationships with Federal Agencies.—Held more than 75 meetings with federal agency headquarters staff to help them meet their statutory requirements. Served as trainers for 25 agency-sponsored training programs.

Requested Legislative and Judicial Branches of Government to take Steps to Provide Equal Opportunity in Employment for Handicapped Individuals.—This recommendation of ICHE and PSP was implemented through correspondence addressed to key members of the Congress and the Judicial Conference of the United States.

Designated New Member of ICHE.—By Executive Order 12450 signed by President Reagan on December 9, 1983, the Secretary of Health and Human Services was designated a member of ICHE. PSP prepared all paperwork and coordinated this effort.

Established Brown Bag Lunch Series on Equal Employment Opportunity for Handicapped Individuals.—In cooperation with EEOC's Staff Development and Training Division PSP established a monthly brown bag luncheon series for managers and supervisors on handicapped issues.

Sponsored Conference for EEO Directors of Federal Agencies.—In cooperation with ORA and OCA sponsored a Federal Sector Conference for EEO Directors of all Government Agencies. Chairman gave opening addresses. Over 100 participants took part.

Implemented Nation-Wide Pilot Program Decisions from the Bench.—Designated nine offices nationwide to try out pilot program decisions from the bench. Program was successful and will propose implementing nationwide in FY '85.

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PERCENT OF HANDICAPPED INDIVIDUALS

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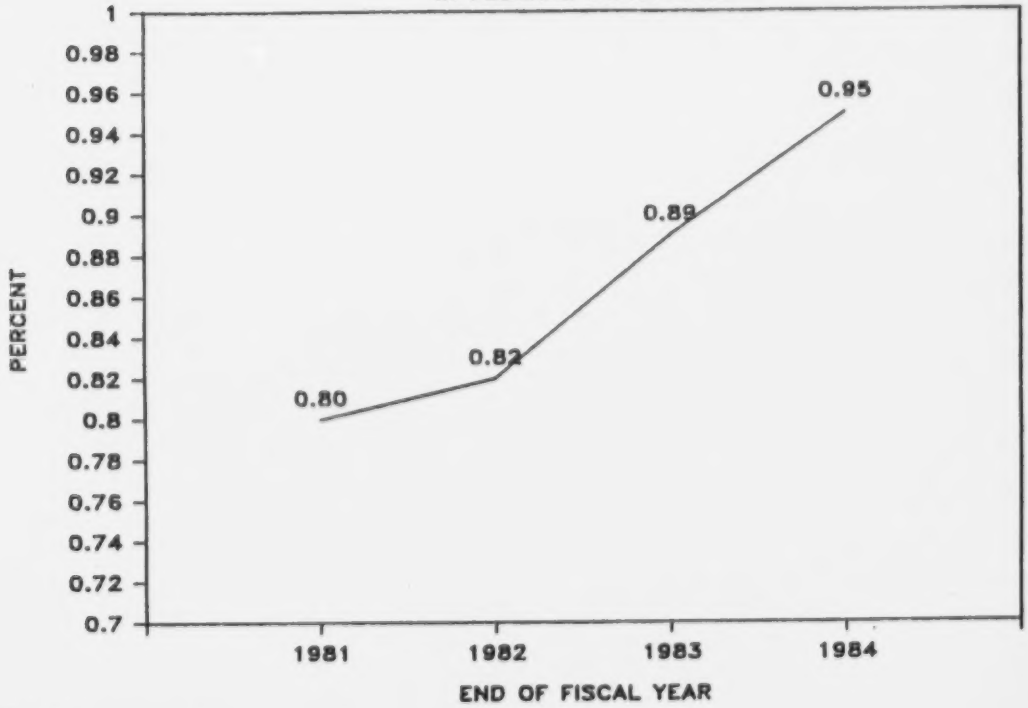
PERCENT OF TARGETED DISABILITIES

IN FEDERAL WORKFORCE



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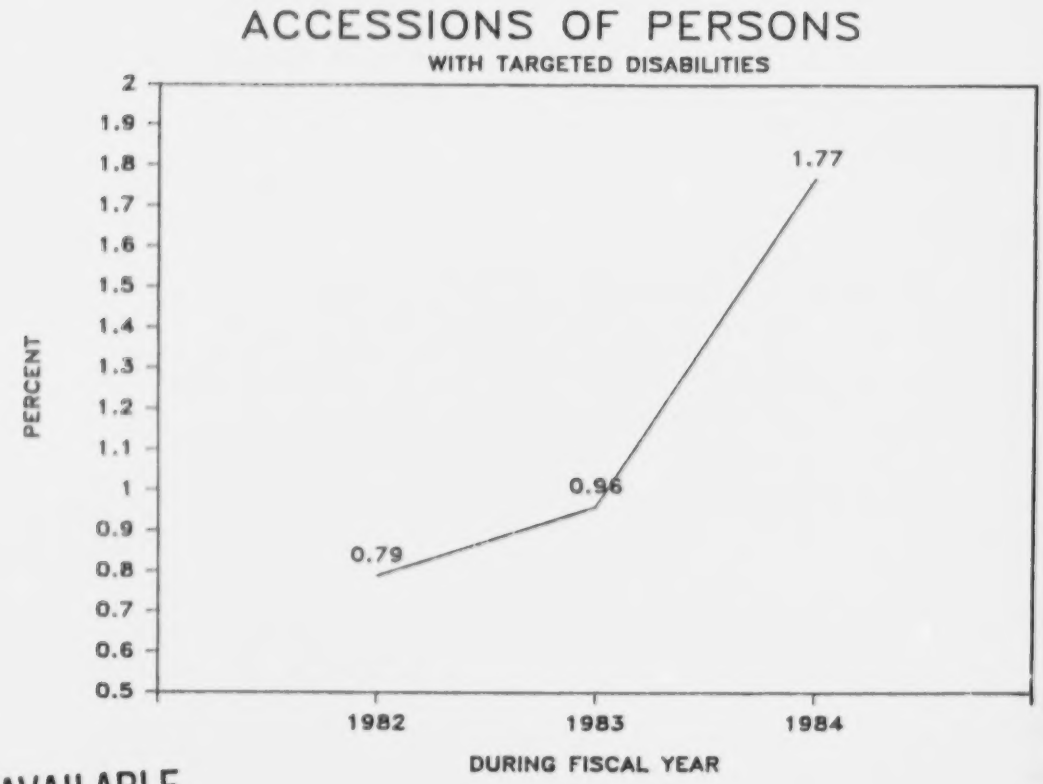

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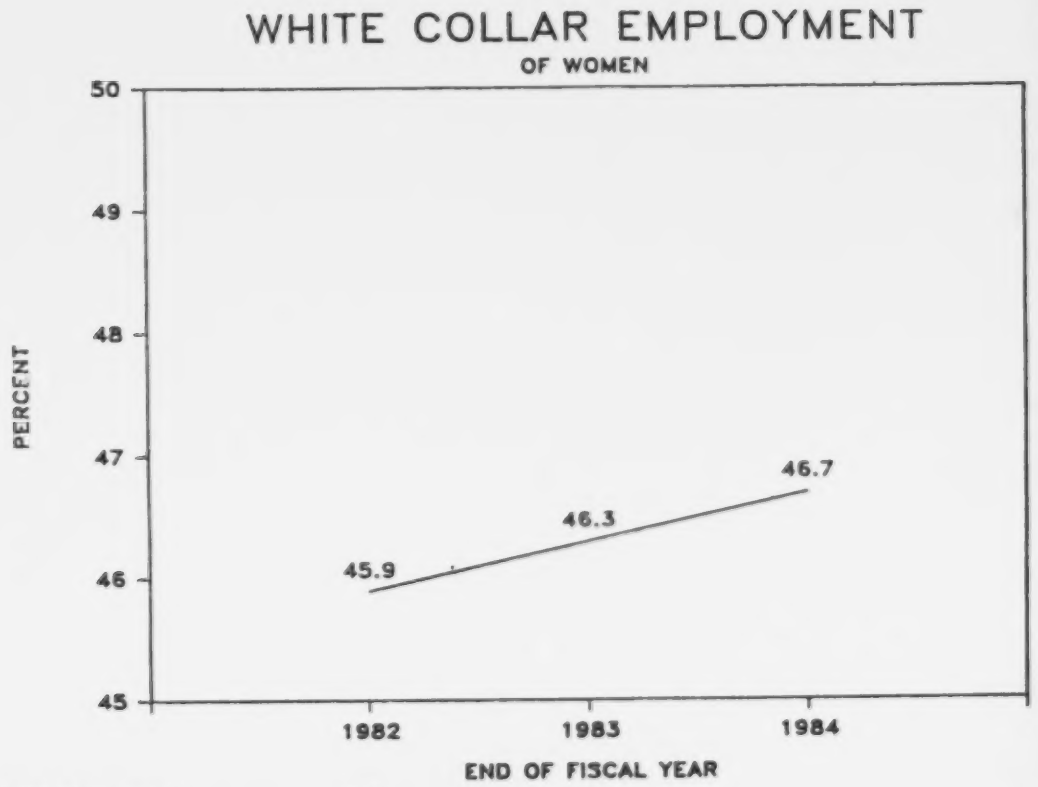

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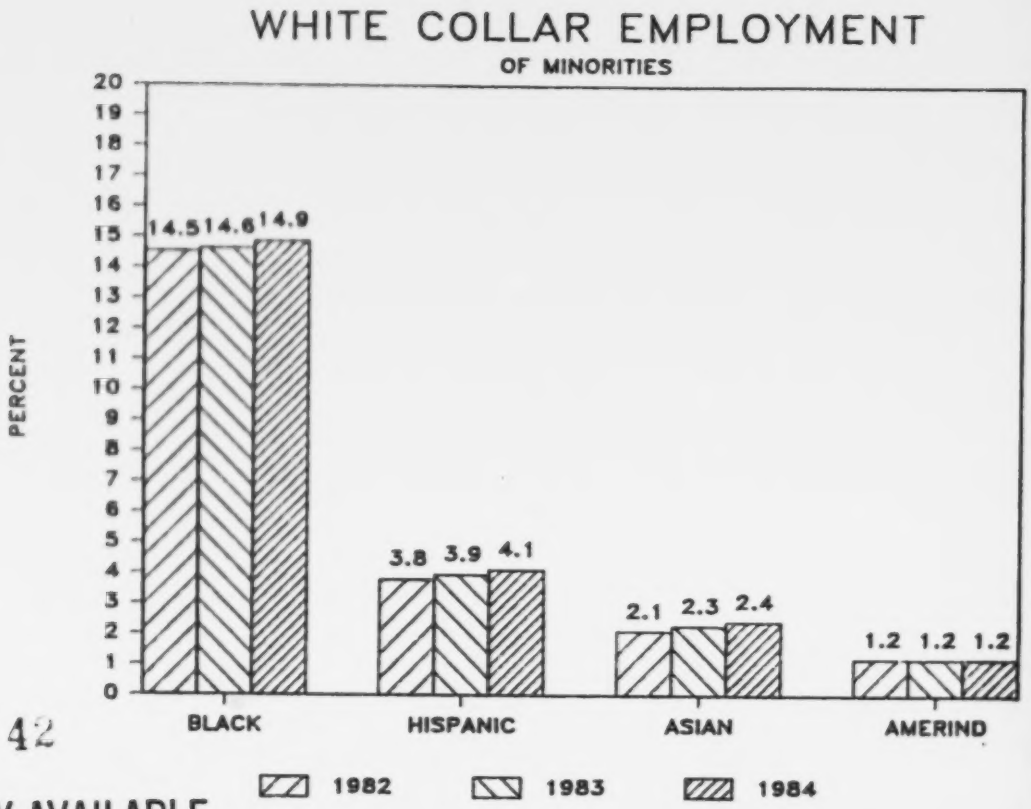

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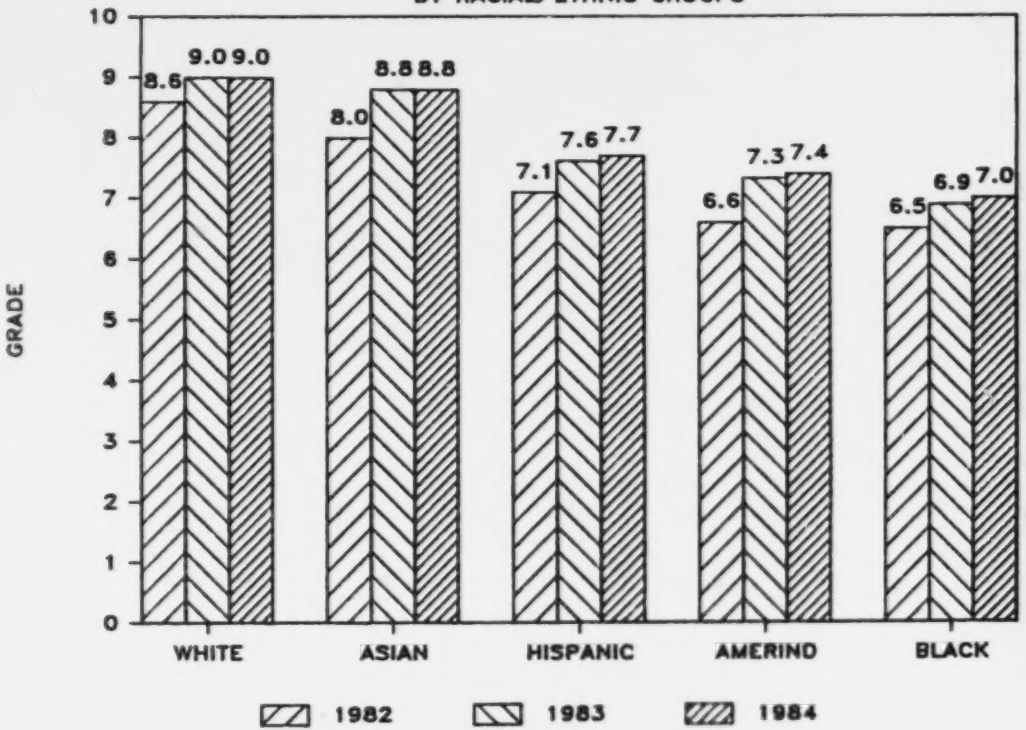
AVERAGE GRADE WHITE COLLAR

BY RACIAL/ETHNIC GROUPS



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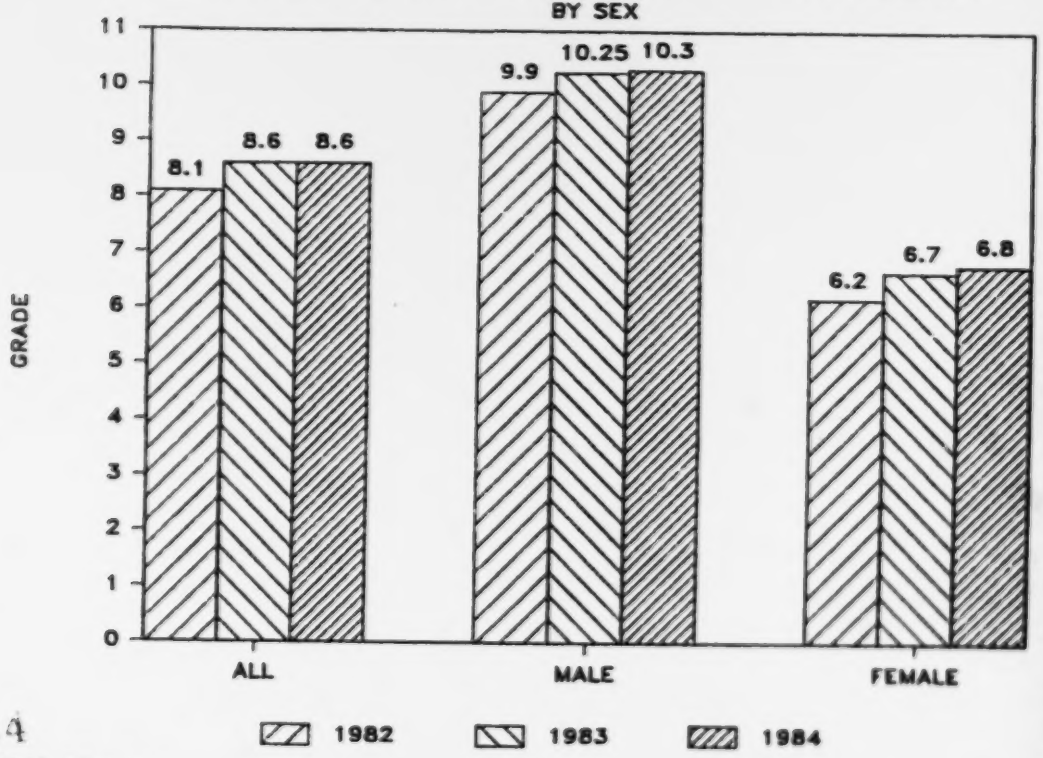
AVERAGE GRADE WHITE COLLAR

BY SEX



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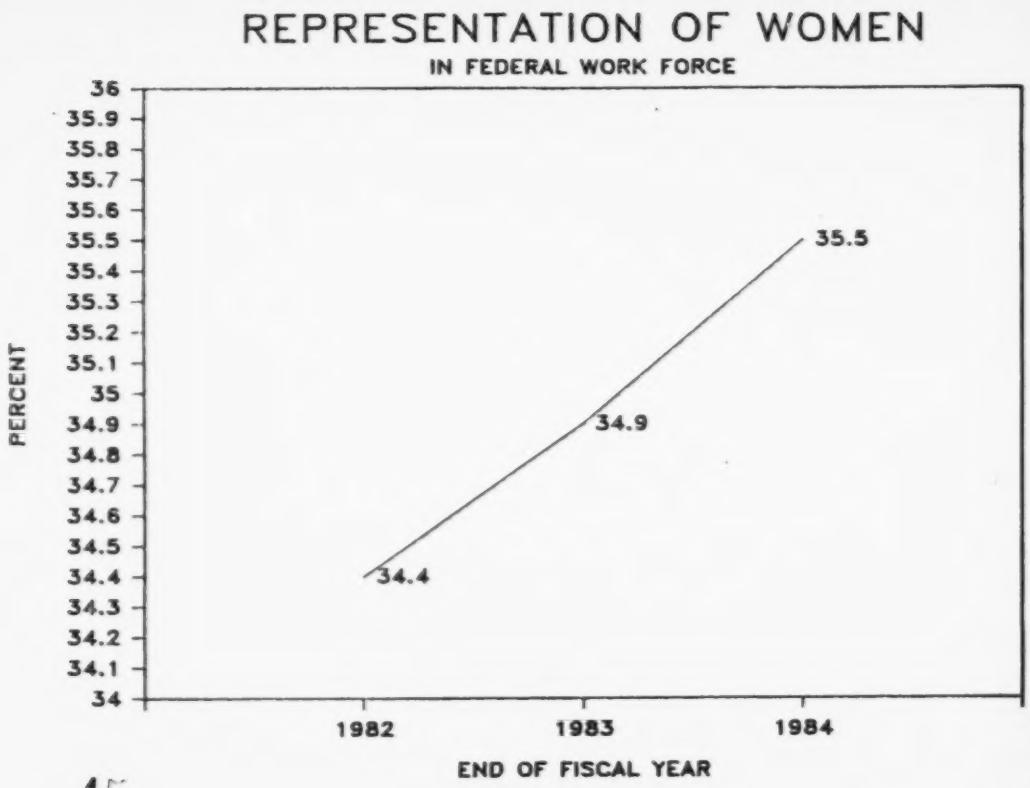
REPRESENTATION OF WOMEN
IN FEDERAL WORK FORCE
PERCENT
36
35.9
35.8
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1982
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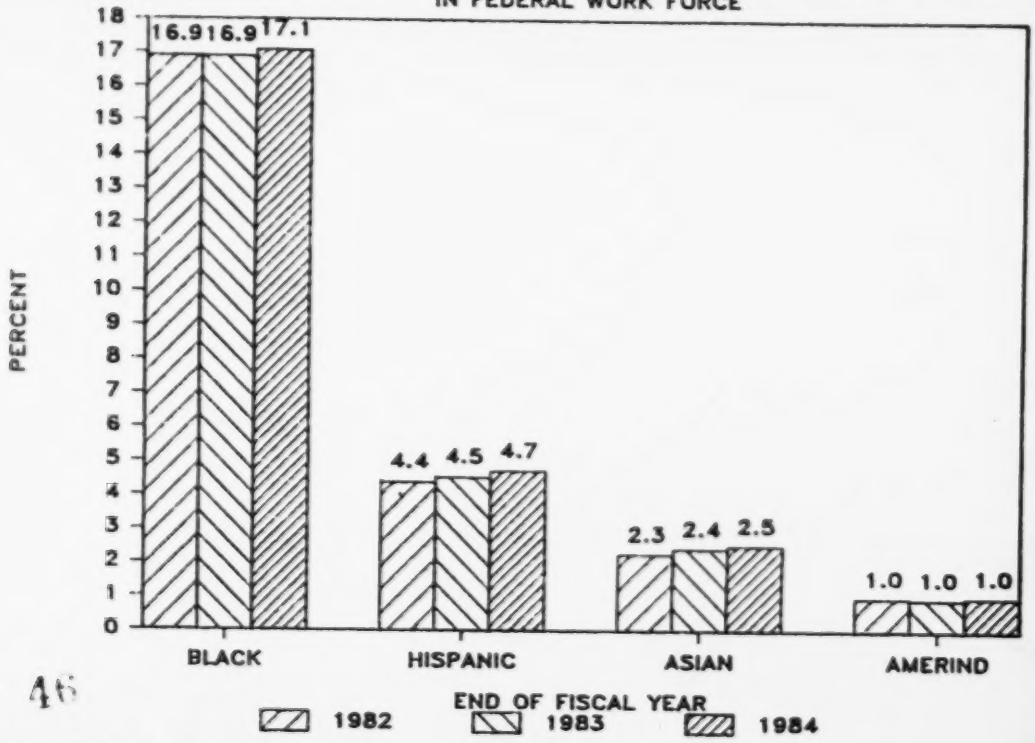
1984
END OF FISCAL YEAR

REPRESENTATION OF MINORITIES

IN FEDERAL WORK FORCE



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EEOC

Report on Precomplaint Processing and Complaint Processing

For FY - 82

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ANALYSIS OF PRE-COMPLAINT COUNSELING AND COMPLAINT PROCESSING DATA

SUBMITTED BY FEDERAL AGENCIES FOR FISCAL YEAR 1982

Federal Sector Program Division
Public Sector Programs
Office of Program Operations
Equal Employment Opportunity Commission

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Analysis of Pre-complaint Counseling and Complaint Processing Data

Submitted by Federal Agencies for Fiscal Year 1982

Introduction

This analysis of federal agency pre-complaint counseling and complaint processing is based on Fiscal Year 1982 data received from 62 federal agencies on EEOC report Form No. 462 (see Attachment No. 1) and is the second published analysis by Commission staff of such agency complaint processing data.[1] The data for FY 82 reflect, for the most part, little change from FY 81.

The agencies' reports analyze activity in the pre-appellate complaint process. This process has the following stages:

- o informal counseling stage, during which an attempt at informal resolution of the matter is attempted;
- o acceptance or rejection of a complaint that has been filed with the agency;
- o investigation;
- o attempt at adjustment of the complaint;
- o issuance of a Proposed Disposition;
- o hearing by an EEOC Complaints Examiner (if requested by complainant); and
- o Agency Decision.

Organization and Methodology

The report has four sections. Each section consists of an analysis of agency-provided data, conclusions and/or recommendations drawn or made therefrom, and tables displaying the data. The four sections are:

I. Complaint Closures by Type of Closure;
II. Average Number of Days to Closure By Type of Closure;
III. Agency Actions and Recommended Decisions of EEOC Complaints Examiners; and
IV. Complaints Summary (Inventory).

In addition, data on the bases and issues alleged in the complaints filed were tabulated and are shown in Tables I and II. Although 22 categories of issues are listed on EEOC Form 462, more than 50% of all issues alleged were concentrated in only four categories (promotion, termination, suspension and other). More than one-third of all alleged bases were concentrated in only two categories (out of 12)--race, Black and sex, female. It should be noted that, since complainants often allege more than one issue and/or basis, more issues and bases were alleged than the number of complaints filed.

Also attached is an appendix containing information about numbers of counseling contacts and complaints filed by agency, and the percentages that these numbers represent of each agency's total workforce. Although the data are interesting, there was insufficient information to draw any useful conclusions about the efficacy of the agencies' EEO counseling program.

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[1]Reports submitted by agencies for FY 82 are virtually complete; one agency did not report its work force totals because the information is classified.

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No significance tests or other statistical refinements were used on the FY 82 data. Nevertheless, to avoid the kind of distortion that can be introduced when very small numbers are involved, the analyses below have adopted an arbitrary rule, i.e., not to address as in any way significant actions taken on a given group of complaints if that group of complaints was less than 20 in number.

For each set of data analyzed, both means and medians are provided. Means provide a measure of performance of an agency compared with the Federal Government as a whole; the median provides a measure against which a particular agency's performance may be compared with other agencies' performance. For example, if an agency's number of days to closure by rejection was 142 days and the mean and median for all complaints and all agencies were 75 and 157 respectively, then complaints at that agency took almost twice as long to be rejected as all complaints rejected by all federal agencies, but the agency still was performing better in this category than at least half the agencies surveyed.

Several analyses use adjusted means and/or medians: In some cases they have been adjusted to exclude agencies for which the data are incomplete for that category, and in other cases to exclude agencies which had fewer than 20 complaints in the category being analyzed.

Summary of Findings

As was stated in the comparable report for FY 81, in the staff's opinion, the data argue for a long-overdue revision of the entire complaint processing system. However, conclusions and recommendations in this paper focus only upon how the administrative process might be improved within the context of the present process.

The data continue to confirm that, as for FY 81, the present system is not efficient. Agencies require considerably longer periods of time to issue final agency decisions than were envisioned by Congress which set 180 days as the appropriate time period. The rates of certain kinds of closures are quite high (or low) in comparison to comparable rates in other complaint processing systems.

- Intake is uneven; in many agencies too many complaints get into the system that do not belong in it (see in particular the high rejection rates);

- Complaints closed through settlement are closed a long time after filing (frequently at the stage at which a Commission Complaints Examiner facilitates the voluntary resolution) and some agencies may be in non-compliance with the spirit, if not the letter, of the regulatory requirement at 29 CFR §1613.217(a) that the agency provide an opportunity for informal adjustment;

- Agencies continue to accept far more Recommended Decisions finding no discrimination than they accept Recommended Decisions finding discrimination, and certain agencies do so in clearly disproportionate fashion;

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- On the basis of limited data, withdrawal rates continue to appear high;
- Closures of all types continue to take far too long (see in particular closures by issuance of an Agency Decision on the merits); and
- The data for some of the larger agencies indicate that they have processing problems in a number of areas, not just one or two.

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TABLE I

RANKING OF ISSUES ALLEGED (HIGHEST TO LOWEST) IN

COMPLAINTS FILED IN FY 82

Issue Alleged	# of allegations	% of total allegations in complaints filed
Other	3,458	17.0
Promotion	3,357	16.5
Termination	2,235	11.0
Suspension	1,863	9.2
Reprimand	1,605	7.9
Harassment (non-sexual)	1,329	6.5
Sexual Harassment	890	4.4
Appointment	811	4.0
Assignment of Duties	733	3.6
Reassignment	700	3.4
Training	623	3.1
Time and Attendance	493	2.4
Duty Hours	484	2.4
Working Conditions	426	2.1
Non-merit pay	378	1.8
Pay/including overtime	262	1.3
Merit Pay	253	1.2
Reinstatement	191	0.9
Awards	72	0.4
Conversion to full-time	59	0.3
Examination test	53	0.3
Retirement	58	0.3
Total	20,333	

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TABLE II

RANKING OF BASES ALLEGED (HIGHEST TO LOWEST) IN

COMPLAINTS FILED IN FY 82

Basis Alleged	# of allegations	% of total bases alleged in complaints filed
Race, Black	4,506	21.3
Sex, Female	2,987	14.1
Reprisal	2,469	11.7
Age	1,926	9.1
Sex, Male	1,840	8.7
National Origin, Other	1,610	7.6
Handicap, Physical	1,553	7.3
Race, White	1,226	5.8
Race, Other	1,066	5.0
National Origin, Hispanic	889	4.2
Religion	794	3.8
Handicap, Mental	279	1.3
Total	21,145	

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SECTION I

COMPLAINT CLOSURES BY TYPE OF CLOSURE

Analysis and Conclusions/Recommendations

In this section, data on types of closures made by agencies are analyzed. Agency figures for closures indicate that there are increasing numbers (compared to FY 81) of resolutions through voluntary settlement.

A. Rejections

1. Analysis: A complaint may be rejected due to untimeliness, lack of jurisdiction ("purview") and/or because the complaint is identical to one previously filed. The mean percentage of total closures that were rejections was 15%; for agencies with 20 or more closures, the median was 13%, slightly above that for FY 81 (12%). See Table III. Of agencies closing 20 or more complaints, the Office of Personnel Management had a percentage of twice the mean with 30% (7 of 23 closures). See Table IV for a ranking of agencies with 20 or more closures by percentage of closures that were rejections.

2. Conclusions/Recommendations: While 15% of federal complaints were closed due to rejection, the percentage of charges closed in private sector charge processing for the same reasons was only 3% during FY 82. This contrast is striking. Because federal complainants generally file complaints without assistance from EEO counselors or from anyone else with expertise in the area of EEO law, agencies reject large numbers of complaints which might not have entered the system had the potential complainant received intensive counseling of the sort received by a potential charging party in the private sector. Without professional assistance to the complainant at the intake stage, such high rejection rates—and the inefficiencies which consequently result—are probably inevitable. Another reason why rejection rates are higher in the federal sector than in the private sector is that many rejections in the federal sector are based upon lack of timeliness on the part of the complainant in bringing the matter before the agency. Complainants, in the present system, have only 30 days to take the matter they wish to complain about to a counselor. That 30-day time period is under review as one part of a possible comprehensive review of the federal EEO complaint processing system.

B. Cancellations

Analysis: Complaints are cancelled when the complainant fails to prosecute the claim. The mean percentage of closures that were cancellations was 6%, unchanged from FY 81; the median was 0%, also unchanged from FY 81; the adjusted median (to exclude agencies with fewer than 20 closures) was 6%, up slightly from FY 81's figure of 5%.

C. Withdrawals

1. Analysis: The mean percentage of total closures that were withdrawals was 22%, down from 34% in FY 81; the median was 9%, down from 19%;

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and the median adjusted to exclude agencies with 19 or fewer closures was 19% down from 32%. See Table III. Of agencies with 20 or more closures, the three agencies with the highest percentages in this category were: the Central Intelligence Agency (48% - 10 of 21); the Veterans Administration (35% - 134 of 380); and the Department of the Interior (33% - 38 of 116). See Table V for a ranking of agencies with 20 or more closures by percentage of closures that were withdrawals.

2. Conclusions/Recommendations: Without further information (which it would not be practical to seek at this time), it is difficult to know what significance to attach to a respondent agency having an unusually high rate of closures due to withdrawals. For example, some of the withdrawals reported might, in fact, involve settlement of the complaint where the terms of the settlement are not in writing, with withdrawal of the complaint being part of the settlement. If that is what the high withdrawal rate in fact means for one or more agencies, then complainants in those agencies are being placed at a disadvantage as compared to complainants whose cases were closed through a signed settlement agreement, since the existence of a signed agreement provides a certain vehicle for correction in the case of breach. Without an agreement, the possibility for correction is less likely.

There are other possible reasons for a high withdrawal rate—the complaints take so long to process that complainants may become discouraged and decide nothing is to be gained from keeping the complaint alive. (See Section II.C., below, for statistics on how long complaints have been in process at the time of withdrawal.) Another possibility is that in certain agencies the likelihood of voluntary resolutions is so small that complainants become discouraged and discontinue their cases. This may be the case with the three agencies referenced above.

D. Settlements

1. Analysis: The mean percentage of total closures that were settlements was 28%, up considerably from the reported 11% for FY 81 and from the 16% rate for FY 81 if that year's rate is adjusted to reflect FY 82 reporting instructions (see C above). The median was 18% while the median adjusted to exclude agencies with 19 or fewer closures was 25%. (See Table III.)

Of agencies with 20 or more closures, the Veterans Administration had the lowest settlement rate at 5% (19 of 380 closures). See Table VI for ranking of agencies by settlement rates.

The five agencies with more than 20 total closures during FY 82 that have the highest percentages of settlement were: the Department of the Interior (56% - 65 of 116 closures); the Government Printing Office (43% - 15 of 35 closures); the Environmental Protection Agency (34% - 11 of 32 closures); the United States Postal Service (34% - 3,175 of 9,322 closures); and the Department of the Treasury (33% - 125 of 379 closures).

As in FY 81, not all settlements reported by agencies were brought about through settlement efforts of the agency alone: after an agency has completed its own investigation and adjustment efforts, the complainant may request assignment of the case to an EEOC Complaints Examiner for a hearing. As

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part of the hearings process, the Commission encourages settlement. During FY 82, 35% of the cases assigned to Complaints Examiners settled, up from the FY 81 rate of 24%. These constituted approximately 23% of all settlements achieved in the federal sector administrative complaint process during FY 82.

2. Conclusions/Recommendations: Title VII emphasizes voluntary settlement of complaints. The Commission's experience, and that of many state and local anti-discrimination agencies as well, has been that a systematic and continuing focus upon settlement of a complaint by the parties at all times is essential to a productive and cost-effective complaint processing system. Without such a sustained focus, complaint processing is likely to revert to a labored investigation and a determination on the merits of all complaints, regardless of whether such an expenditure of resources is necessary or beneficial to the parties.

Even within the existing framework, it is apparent that not all agencies are yielding the best possible results. Indeed, EEOC Complaints Examiners, who are assigned cases after an agency has completed its investigation and adjustment efforts, are settling cases at a rate 25% higher than the overall agency rate.

E. Agency Decisions

1. Analysis: The mean percentage of total closures by agency decisions on the merits was 29%, down from the FY 81 rate of 33%; the median was 33%, unchanged from FY 81; and the median adjusted to exclude agencies with 19 or fewer closures was 38%, up from the FY 81 rate of 34%. See Table III. Of agencies with 20 or more closures, those that were 15 percentage points or more above the mean were: the Small Business Administration (58%); the Department of Housing and Urban Development (52%); the Department of Agriculture, the Office of Personnel Management, and the Tennessee Valley Authority (each with 48%); and the Department of Health and Human Services (47%). The Central Intelligence Agency, on the other hand, reached a decision on the merits in only 5% of its closures (1 out of 21).

2. Conclusions/Recommendations: A considerable number of factors may affect how many complaints reach a decision on the merits by the respondent agency: agency complaint processing peculiarities (if an agency fails to encourage settlement, more complaints will of necessity go through to decision), employee and union attitudes toward settlement, and other factors difficult to identify. Since, however, this type of closure is the least cost effective, at least in terms of time expenditure (and in some instances least desirable in terms of resolving problems in the workplace rapidly), agencies with very high percentages should try to resolve more complaints through voluntary settlement where appropriate.

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TABLE III

FY 82

AGENCY CLOSURE RATES

AGENCY OR DEPARTMENT	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS A % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES									
				REJECTIONS		CANCELLATIONS		WITHDRAWALS		SETTLEMENTS		AGENCY DECISIONS	
				#	%	#	%	#	%	#	%	#	%
Action	1	4	400%	0	0%	0	0%	1	25%	1	25%	2	50%
Admin. Office of the U. S. Courts	4	1	25%	0	0%	0	0%	1	100%	0	0%	0	0%
Agency for International Development	10	19	190%	2	11%	1	5%	2	11%	3	16%	11	58%
Agriculture	173	155	90%	11	7%	4	3%	26	17%	40	26%	74	48%
Arms Control & Disarmament Agency	1	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Central Intelligence Agency	6	21	350%	4	19%	0	0%	10	48%	6	29%	1	5%
Civil Aeronautics Board	2	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Commerce	51	66	129%	3	5%	10	15%	17	26%	13	20%	23	35%
Commission on Civil Rights	5	6	120%	0	0%	0	0%	1	17%	1	17%	4	67%
Commodity Futures Trading Commission	2	5	250%	0	0%	0	0%	0	0%	1	20%	4	80%
Consumer Product Safety Commission	2	2	100%	0	0%	0	0%	2	100%	0	0%	0	0%
Defense (Total)	2314	2217	96%	314	14%	127	6%	569	26%	282	13%	925	42%
Air Force	610	547	90%	60	12%	45	8%	161	29%	76	14%	201	37%
Army	765	726	95%	62	9%	41	6%	120	18%	82	12%	405	56%
Navy	612	617	101%	135	22%	23	4%	185	30%	79	13%	195	32%
Defense Logistics Agency	138	152	110%	12	8%	16	11%	58	38%	12	8%	54	36%
Other Defense	189	175	93%	40	23%	2	1%	35	20%	28	16%	70	40%
Education	25	18	72%	0	0%	1	6%	4	22%	6	33%	7	39%
Energy	24	33	138%	6	18%	3	9%	5	15%	8	24%	11	33%
Environmental Protection Agency	40	32	80%	1	3%	0	0%	8	25%	11	34%	12	38%

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TABLE III (cont)

FY 82

AGENCY CLOSURE RATES

AGENCY OR DEPARTMENT	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS A % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES									
				REJECTIONS		CANCELLATIONS		WITHDRAWALS		SETTLEMENTS		AGENCY DECISIONS	
				#	%	#	%	#	%	#	%	#	%
Equal Employment Opportunity Comm	140	134	96%	17	13%	15	11%	22	16%	25	19%	55	41%
Export-Import Bank of the U.S.	6	4	67%	0	0%	0	0%	0	0%	0	0%	4	100%
Farm Credit Administration	1	1	100%	0	0%	0	0%	0	0%	0	0%	1	100%
Fed Communications Commission	1	2	200%	0	0%	1	100%	0	0%	0	0%	0	0%
Fed Deposit Insurance Corp	1	3	300%	0	0%	1	33%	0	0%	0	0%	2	67%
Fed Emergency Management Agency	9	7	78%	4	57%	0	0%	0	0%	2	29%	1	14%
Fed Home Loan Bank Board	4	10	250%	5	50%	0	0%	2	20%	0	0%	3	30%
Fed Labor Relations Authority	1	2	200%	0	0%	0	0%	0	0%	2	100%	0	0%
Fed Maritime Commission	8	6	75%	3	50%	0	0%	0	0%	3	50%	0	0%
Fed Mediation & Conciliation Service	0	3	0%	0	0%	0	0%	0	0%	1	33%	2	67%
Fed Reserve System-Board of Gov	1	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Fed Trade Commission	4	6	150%	0	0%	0	0%	0	0%	2	33%	4	67%
General Services Administration	62	94	152%	14	15%	8	9%	19	20%	16	17%	37	39%
Government Printing Office	23	35	152%	1	3%	2	6%	3	9%	15	43%	14	40%
Health and Human Services	507	664	131%	93	14%	43	6%	119	18%	95	14%	314	47%
Housing & Urban Development	110	56	51%	7	13%	3	5%	3	5%	14	25%	29	52%
Interior	235	116	49%	1	1%	3	3%	38	33%	65	56%	9	8%
International Communication Agency	4	5	125%	1	20%	1	20%	0	0%	0	0%	3	60%
International Trade Commission	8	6	75%	0	0%	0	0%	1	17%	0	0%	5	83%
Interstate Commerce Commission	9	6	67%	1	17%	0	0%	0	0%	3	50%	2	33%

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TABLE III (cont)

FY 82

AGENCY OR DEPARTMENT	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS A % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES									
				SELECTIONS		CANCELLATIONS		WITHDRAWALS		SETTLEMENTS		AGENCY DECISIONS	
				#	%	#	%	#	%	#	%	#	%
AGENCY CLOSURE RATES													
Justice	263	294	78%	24	12%	26	13%	32	16%	59	29%	65	32%
Labor	95	108	114%	9	8%	10	9%	28	26%	25	23%	36	33%
Merit Systems Protection Board	5	2	40%	1	50%	0	0%	0	0%	0	0%	1	50%
Natl Aeronautics & Space Admin	15	14	93%	0	0%	3	21%	1	7%	2	14%	8	57%
Natl Credit Union Administration	3	3	100%	1	33%	0	0%	0	0%	0	0%	2	67%
Natl Endowment for the Arts	1	2	200%	0	0%	0	0%	0	0%	2	100%	0	0%
Natl Endowment for the Humanities	0	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Natl Labor Relations Board	5	13	260%	2	15%	1	8%	0	0%	8	62%	2	15%
Natl Science Foundation	2	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Nuclear Regulatory Commission	1	3	300%	0	0%	*0	0%	0	0%	1	33%	2	67%
Occupational Safety & Health Review	0	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
OPI/Alaska Natural Gas Trans System	0	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Office of Personnel Management	29	22	79%	2	10%	1	4%	2	9%	2	9%	11	48%
Panama Canal Commission	15	16	107%	1	6%	1	6%	0	0%	3	19%	11	69%
Pension Benefit Guaranty Corp	0	1	0%	0	0%	0	0%	1	100%	0	0%	0	0%
Postal Service	8023	9322	116%	1545	17%	450	5%	1997	21%	3175	34%	2152	23%
Railroad Retirement Board	3	8	267%	1	13%	2	25%	2	25%	2	25%	1	13%
Securities & Exchange Commission	3	10	333%	0	0%	0	0%	3	30%	6	60%	1	10%
Selective Service System	0	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Small Business Administration	28	26	93%	0	0%	0	0%	3	12%	8	31%	15	58%

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TABLE III (cont)

FY 82

AGENCY OR DEPARTMENT	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS A % OF TOTAL COMPLAINTS FILED	AGENCY CLOSURE RATES											
				COMPLAINT CLOSURE TYPES											
				DISMISSIONS		CANCELLATIONS		WITHDRAWALS		SETTLEMENTS		AGENCY DECISIONS	
				#	%	#	%	#	%	#	%	#	%
Soldiers' & Airmen's Home	1	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Smithsonian Institution	13	9	69%	0	0%	1	11%	1	11%	6	67%	1	11%
State Department	26	15	58%	4	27%	2	13%	4	27%	0	0%	5	33%
Tennessee Valley Authority	212	192	91%	18	9%	15	8%	37	19%	29	15%	93	48%
Transportation	258	248	96%	36	15%	39	16%	15	6%	80	32%	78	31%
Treasury	444	329	85%	34	9%	14	4%	84	22%	125	33%	122	32%
Veterans Administration	622	380	61%	52	14%	34	9%	134	35%	19	5%	141	37%
TOTAL	13,861	14,720	106%	2,221	15%	826	6%	3,197	22%	4,167	28%	4,311	29%

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TABLE IV

RANKING OF AGENCIES (LOWEST TO HIGHEST) BY PERCENTAGE OF CLOSURES

THAT WERE REJECTIONS IN FY 82

(of agencies with 20 or more closures)

Agency	% of Closures by Rejection	Total Closures
Small Business Adminstration	0	26
Interior	1	116
Environmental Protection Agency	3	32
Government Printing Office	3	35
Commerce	5	66
Agriculture	7	155
Labor	8	108
Tennessee Valley Authority	9	192
Treasury	9	379
Justice	12	206
Equal Employment Opportunity Comm.	13	134
Housing and Urban Development	13	56
Defense (Total)	14	2,217
Health and Human Services	14	664
Veterans Administration	14	380
General Services Administration	15	94
Transportation	15	248
Postal Service	17	9,322
Energy	18	33
Central Intelligence Agency	19	21
Office of Personnel Management	30	23

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TABLE V

RANKING OF AGENCIES (LOWEST TO HIGHEST) BY

PERCENTAGE OF CLOSURES THAT WERE WITHDRAWALS IN FY 82

(of agencies with 20 or more closures)

Agency	% of Closures by Withdrawals	Total Closures
Housing and Urban Development	5	56
Transportation	6	248
Government Printing Office	9	35
Office of Personnel Management	9	23
Small Business Administration	12	26
Energy	15	33
Equal Employment Opportunity Comm.	16	134
Justice	16	206
Agriculture	17	155
Health and Human Services	18	664
Tennessee Valley Authority	19	192
General Services Adminstration	20	94
Postal Service	21	9,322
Treasury	22	379
Environmental Protection Agency	25	32
Commerce	26	66
Defense (Total)	26	2,217
Labor	26	108
Interior	33	116
Veterans Administration	35	380
Central Intelligence Agency	48	21

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TABLE VI

RANKING OF AGENCIES (HIGHEST TO LOWEST) BY PERCENTAGE OF CLOSURES THAT WERE SETTLEMENTS IN FY 82

(of agencies with 20 or more closures)

Agency	% of Closures by Settlement	Total Closures
Interior	56	116
Government Printing Office	43	35
Environmental Protection Agency	34	32
Postal Service	34	9,322
Treasury	33	379
Transportation	32	248
Small Business Administration	31	26
Central Intelligence Agency	29	21
Justice	29	206
Agriculture	26	155
Housing and Urban Development	25	56
Energy	24	33
Labor	23	108
Commerce	20	66
Equal Employment Opportunity Comm.	19	134
General Services Administration	17	94
Tennessee Valley Authority	15	192
Health and Human Services	14	664
Defense (Total)	13	2,217
Office of Personnel Management	9	23
Veterans Administration	5	380

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SECTION II

AVERAGE NUMBER OF DAYS TO CLOSURE, BY TYPE OF CLOSURE

Analysis and Conclusions/Recommendations

Data covering average number of days to closure by type were reported in the following five categories: Rejections, Cancellations, Withdrawals, Settlements, and Agency Decisions. The overall average timeframe for all closures was 374, as compared to 303 days in FY 81.

A. Rejections

1. Analysis: The mean number of days to closure by rejection was 130 days, down from the FY 81 average of 134 days; the median was 131 days, up from FY 81's average of 128 days; and the median adjusted to exclude agencies with fewer than 20 closures was 136 days, up from 133 days in FY 81. See Table VII. Four agencies required more extended periods of time: the Veterans Administration (601 days); the Department of Agriculture (359 days); the Department of the Treasury (333 days); the Department of Labor (276 days); and the Environmental Protection Agency (262 days). See Table VIII for a ranking of agencies with 20 or more closures by this type of closure. The Department of Commerce, the Central Intelligence Agency, the General Services Administration, and the Department of Justice also reported long periods of time to closure by rejection in FY 82.

2. Conclusions/Recommendations: The regulations provide discrete, identifiable grounds upon which a complaint may be rejected. These are: lack of timeliness, lack of jurisdiction, and/or because the complaint is identical to one previously filed. The long periods of time noted above appear rather extended and would appear to indicate apparent failures in case management.

B. Cancellations

1. Analysis: The mean number of days to closure by cancellation was 367 days, up from the FY 81 average of 350 days; the median was 337 days, up considerably from FY 81's median of 253 days; and the median adjusted to exclude agencies with 19 or fewer closures was 337 days, up from an adjusted mean in FY 81 of 184 days. See Table VII. Of agencies with 20 or more closures, six agencies required considerably longer periods of time than most: the Office of Personnel Management (1,319 days); the Department of Housing and Urban Development (1,245 days); the Department of Energy (868 days); the Department of the Treasury (656 days); the Department of Agriculture (640 days); and the Veterans Administration (492 days).

2. Conclusions/Recommendations: Cancellations of a complaint are made only because the complainant fails to prosecute his/her complaint. Failure to prosecute could occur at any stage, early or late, of processing. Agencies whose processing time is above the mean for the number of days to closure by cancellation might examine files of cases closed through cancellation in order to identify potential problem areas.

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C. Withdrawals

1. Analysis: The mean number of days to closure for withdrawals was 308 days, a decline from the FY 81 average of 372 days; the median was 324 days, up from the FY 81 figure of 306 days; the median number of days adjusted to exclude agencies with fewer than 20 closures was 317 days, down from the FY 81 adjusted mean of 341 days. See Table VII. Of agencies with more than 20 closures, eight agencies required considerably longer periods of time: the Central Intelligence Agency (1,269 days); the Veterans Administration (811 days); the Department of Commerce (709 days); the Department of the Interior (677 days); the Department of Transportation (468 days); the Department of Agriculture (460 days); the Department of Justice (447 days); and the Department of the Treasury (389 days).

2. Conclusions/Recommendations: It is difficult to draw any conclusions from these data, as indicated in the earlier discussion of withdrawals, without further information on exactly what sorts of cases close through withdrawal and why complainants withdraw after such long periods of time. It is possible that in some cases complainants withdrew precisely because so much time had passed since filing.[1]

D. Settlements

1. Analysis: The mean number of days to closure by settlement was 328 days, down slightly from the FY 81 mean of 342 days; the median number of days was 443 days, up from the FY 81 figure of 383 days; and the median adjusted to exclude agencies with fewer than 20 closures was 441 days, up considerably from 293 in FY 81. See Table VII. Of the agencies with 20 or more closures, the six agencies with the longest periods of time to closure by settlement were: the Department of Justice (1,569 days); the Central Intelligence Agency (1,348 days); the Environmental Protection Agency (827 days); the Department of Commerce (695 days); the Department of the Interior (560 days); and the Department of Labor (531 days). See Table IX for a ranking of agencies with 20 or more closures. The Environmental Protection Agency was among the four agencies taking the longest periods of time for this type of closure in FY 81 as well, with an average of 1,226 days.

2. Conclusions/Recommendations: Most settlements occurred approximately 14 months after the complaints were filed. The comparable figure in the private sector is about six months. This extended period of time reflects, in part, the fact that most agencies attempt settlement of formal complaints only after the investigation has been completed, at that point in the procedures where the regulations require that an attempt at informal adjustment of the complaint be made. At so late a stage in processing, when the passage of time and the investigation itself diminish the conciliatory bent of the parties, the chances of a successful settlement are considerably less than they are shortly after filing. It is, therefore, recommended that agencies be required to attempt settlement as early and as often in the process as it is reasonable to do so.

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[1]A comparison was made by agency between length of time to withdrawal and withdrawal as a percent of closures, but no clear pattern was found.

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Other than rejection, settlement is the speediest means of resolution and frequently the most desirable from the complainant's and agency's point of view. It cannot be said too often that any complaint processing procedure that is to have a chance of being truly efficient must include a focus upon settlement at all times during processing of the complaints, with especial emphasis being placed during the earliest stages of processing.

E. Agency Decisions

1. Analysis: The mean number of days to closure by Agency Decision on the merits was 595 days, over a year-and-a-half but down 16 days from the FY 81 average of 611 days; the median number of days was 611, up from 598 in FY 81 and the median adjusted to exclude agencies with fewer than 20 closures was 684 days, down from FY 81's figure of 716 days. See Table VII. Of agencies with more than 20 closures, the five requiring the most days to closure by Agency Decision were: the Central Intelligence Agency (1,846 days - just over 5 years); the Environmental Protection Agency (1,623 days - over 4 years); the Department of Energy and the Department of Commerce (each with 1,096 days - 3 years); and the Department of Agriculture (896 days - almost 2 1/2 years). See Table X for a ranking of agencies by this closure time period.

2. Conclusions/Recommendations: Not all the time to closure through issuance of an Agency Decision is due to the agencies' lengthy processing, since some have been delayed by the Commission in the hearing process. Agencies reported closing 4,311 complaints through issuance of an Agency Decision. Commission data on Recommended Decisions transmitted in FY 82 indicate that about 30% of those Agency Decisions involved complaints which were the subject of a Commission-conducted hearing. The Commission took an average of 411 days in FY 1982 to process such complaints compared to an average of 261 days taken by the Commission in FY 81. This 57% increase in processing time was, in large part, a result of two factors: a 41% increase in the number of hearing requests and a 17% decrease in Commission staff who process these requests. Additionally, the bulk of the increase in requests was received during one quarter and not evenly distributed over the year.

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TABLE VII

FY 82 AVERAGE NUMBER OF DAYS TO CLOSURE BY TYPE OF CLOSURE

AGENCY OR DEPARTMENT	AVERAGE NUMBER OF DAYS TO CLOSURE FOR:				
	REJECTION	CANCELLATION	WITHDRAWAL	SETTLEMENT	AGENCY DECISION
Action	0	0	(1) 429	(1) 489	(2) 598
Admin. Office of the US Courts	0	0	(1) 1	0	0
Agency for International Development	(1) 75	(1) 2190	(2) 623	(3) 950	(11) 1093
Agriculture	(11) 159	(4) 640	(26) 660	(40) 467	(34) 894
Arms Control & Disarmament Agency	0	0	0	0	0
Central Intelligence Agency	(4) 177	0	(10) 1269	(8) 1348	(1) 1848
Civil Aeronautics Board	0	0	0	0	0
Commerce	(3) 187	(10) 338	(17) 709	(13) 695	(23) 1096
Commission on Civil Rights	0	0	(1) 23	(1) 560	(4) 791
Commodity Futures Trading Commission	0	0	0	(1) 344	(4) 794
Consumer Product Safety Commission	0	0	(2) 21	0	0
Defense (Total)	(316) 89	(127) 137	(569) 244	(282) 174	(925) 347
Air Force	(64) 108	(45) 499	(161) 275	(76) 174	(201) 594
Army	(83) 49	(41) 271	(130) 244	(87) 337	(405) 475
Navy	(133) 72	(23) 227	(185) 125	(79) 436	(193) 158
Defense Logistics Agency	(12) 107	(16) 256	(58) 227	(13) 383	(54) 387
Other Defense	(40) 150	(2) 134	(35) 247	(28) 182	(70) 281
Education	0	(1) 501	(4) 1082	(6) 991	(7) 1039
Energy	(8) 88	(3) 848	(5) 107	(8) 441	(11) 1098
Environmental Protection Agency	(1) 161	0	(8) 296	(11) 827	(12) 1423
Equal Employment Opportunity Comm.	(17) 134	(15) 332	(22) 117	(25) 346	(55) 760
Export-Import Bank of the US	0	0	0	0	(4) 1047
Farm Credit Administration	0	0	0	0	(1) 178
Federal Communications Commission	0	(3) 349	0	0	0
Federal Deposit Insurance Corp.	0	(1) 211	0	0	(2) 817
Federal Emergency Mgmt. Agency	(4) 93	0	0	(2) 215	(1) 270
Federal Home Loan Bank Board	(3) 43	0	(2) 467	0	(3) 531
Federal Labor Relations Authority	0	0	0	(2) 206	0
Federal Maritime Commission	(3) 42	0	0	(3) 58	0
Fed. Mediation & Conciliation Ser.	0	0	0	(1) 443	(2) 443
Fed. Reserve System-Bd. of Gov.	0	0	0	0	0
Federal Trade Commission	0	0	0	(2) 194	(6) 369
General Services Administration	(16) 165	(8) 348	(19) 130	(16) 194	(37) 442
Government Printing Office	(1) 12	(2) 119	(3) 152	(13) 151	(16) 401

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TABLE VII (cont)

AVERAGE NUMBER OF DAYS TO CLOSURE BY TYPE OF CLOSURE					
AGENCY OR DEPARTMENT	AVERAGE NUMBER OF DAYS TO CLOSURE FOR:				
	REJECTION	CANCELLATION	WITHDRAWAL	SETTLEMENT	AGENCY DECISION
Health and Human Services	(93) 52	(43) 231	(119) 227	(95) 238	(314) 347
Housing & Urban Development	(7) 131	(3) 1245	(3) 178	(14) 361	(19) 194
Interior	(1) 61	(3) 329	(38) 677	(65) 560	(9) 684
International Communication Agency	(1) 312	(1) 1019	0	0	(3) 280
International Trade Commission	0	0	(1) 14	0	(3) 203
Interstate Commerce Commission	(1) 285	0	0	(3) 150	(2) 156
Department of Justice	(14) 161	(26) 232	(32) 447	(59) 1362	(65) 707
Department of Labor	(9) 276	(10) 297	(28) 296	(25) 551	(36) 627
Merit Systems Protection Board	(1) 38	0	0	0	(1) 381
Nat'l Aeronautics & Space Admin.	0	(3) 425	(1) 593	(2) 758	(8) 690
Nat'l Credit Union Administration	(1) 21	0	0	0	(2) 179
Nat'l Endowment for the Arts	0	0	0	(2) 820	0
Nat'l Endowment for the Humanities	0	0	0	0	0
Nat'l Labor Relations Board	(1) 338	(1) 266	0	(8) 581	(2) 645
Nat'l Science Foundation	0	0	0	0	0
Nuclear Regulatory Commission	0	0	0	(1) 657	(2) 753
Occupational Safety & Health Review	0	0	0	0	0
CFI/Alaska Natural Gas Trans. System	0	0	0	0	0
Office of Personnel Management	(7) 138	(1) 1,319	(2) 178	(2) 222	(11) 661
Panama Canal Commission	(1) 4	(1) 131	0	(1) 361	(1) 745
Pension Benefit Guaranty Corp.	0	0	(1) 120	0	0
Postal Service	(130) 120	(108) 481	(108) 453	(1678) 488	(2137) 847
Railroad Retirement Board	(1) 11	(2) 108	(2) 126	(1) 651	(1) 690
Securities & Exchange Commission	0	0	(1) 108	(2) 166	(1) 196
Selective Service System	0	0	0	0	0
Small Business Administration	0	0	(1) 100	(2) 495	(17) 680
Soldiers' & Airmen's Home	0	0	0	0	0
Smithsonian Institution	0	(1) 184	(1) 126	(2) 224	(1) 451
State Department	(2) 110	(4) 614	(2) 156	0	(3) 1443
Tennessee Valley Authority	(10) 88	(12) 711	(17) 178	(19) 168	(28) 130
Transportation	(36) 19	(29) 100	(13) 408	(8) 116	(7) 198
Treasury	(16) 113	(10) 616	(8) 188	(10) 105	(22) 844
Veterans Administration	(15) 601	(2) 404	(2) 611	(1) 643	(11) 851
TOTAL	(222) 130	(82) 387	(418) 309	(416) 128	(831) 491

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TABLE VIII

RANKING OF AGENCIES (LOWEST TO HIGHEST) BY AVERAGE NUMBER

OF DAYS TO CLOSURE BY REJECTION IN FY 82

(of agencies with 20 or more closures)

Agency	Average Number of Days to Closure by Rejection
Small Business Administration	N/A
Government Printing Office	32
Health and Human Services	52
Transportation	59
Interior	61
Tennessee Valley Authority	86
Energy	88
Defense (Total)	89
Postal Service	122
Housing and Urban Development	131
Equal Employment Opportunity Comm.	134
Office of Personnel Management	138
Justice	161
General Services Administration	165
Central Intelligence Agency	177
Commerce	187
Environmental Protection Agency	262
Labor	276
Treasury	333
Agriculture	359
Veterans Adminstration	601

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TABLE IX

RANKING OF AGENCIES (LOWEST TO HIGHEST) BY

AVERAGE NUMBER OF DAYS TO CLOSURE BY SETTLEMENTS IN FY 82

(of agencies with 20 or more closures)

Agency	Average Number of Days to Closure by Settlement
Government Printing Office	153
Office of Personnel Management	222
Health and Human Services	226
Postal Service	280
Transportation	314
Tennessee Valley Authority	328
Housing and Urban Development	361
Equal Employment Opportunity Comm.	364
Defense (Total)	376
General Services Administration	394
Energy	441
Veterans Administration	445
Agriculture	467
Small Business Administration	495
Treasury	505
Labor	531
Interior	560
Commerce	695
Environmental Protection Agency	827
Central Intelligence Agency	1,348
Justice	1,562

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TABLE X

RANKING OF AGENCIES (LOWEST TO HIGHEST) BY AVERAGE

NUMBER OF DAYS TO CLOSURE BY AGENCY DECISIONS IN FY 82

(of agencies with 20 or more closures)

Agency	Average of Days to Closure By Agency Decisions
Government Printing Office	401
General Services Administration	445
Tennessee Valley Authority	530
Health and Human Services	547
Postal Service	547
Defense (Total)	567
Housing and Urban Development	594
Labor	627
Office of Personnel Management	643
Small Business Administration	680
Interior	684
Justice	707
Equal Employment Opportunity Comm.	740
Transportation	796
Treasury	848
Veterans Administration	851
Agriculture	896
Commerce	1,096
Energy	1,096
Environmental Protection Agency	1,623
Central Intelligence Agency	1,846

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SECTION III

AGENCY ACTIONS ON RECOMMENDED DECISIONS OF COMMISSION COMPLAINTS EXAMINERS

Analysis and Conclusions/Recommendations

1. Analysis: If a complainant requests an EEOC Complaints Examiner to be assigned to his/her case, the Complaints Examiner convenes a hearing and thereafter transmits a Recommended Decision to the agency for its review. The agency may either accept the Recommended Decision in its entirety, modify it, or reject it. For all agencies, Commission records indicate 1,338 Recommended Decisions on individual complaints were transmitted to agencies, while the total number of Agency Decisions issued after receipt of a Recommended Decision reported by those agencies on EEOC Form 462 was 1,282.[1]

Of the 363 Recommended Decisions finding discrimination on which agencies reported taking action, the agencies accepted 166, or 46%, slightly more than in FY 81, and modified or rejected the rest. See Table XI. Of the 1,191 Recommended Decisions finding no discrimination on which agencies reported taking action, however, the agencies accepted 829, or 90%, and modified or rejected the rest. This represents a slight reduction from FY 81 when they accepted 97% of Recommended Decisions finding no discrimination. Seven agencies reported taking action on 20 or more Recommended Decisions received from the Commission; they accepted findings of discrimination and findings of no discrimination as follows:

Agency	% of Findings of Discrimination Accepted	% of Findings of No Discrimination Accepted
Treasury	0	0
Veterans Administration	0	75[2]
Defense (Total)	41	95
Postal Service	44	90
Health and Human Services	54	100
Transportation	73	88
Justice	76	100

2. Conclusions/Recommendations: It is striking that EEOC Recommended Decisions finding no discrimination appear to pass muster far more often than Recommended Decisions finding discrimination. Although it is reasonable to expect perhaps some difference between the rate at which an agency accepts Recommended Decisions finding discrimination and the rate at which an agency accepts Recommended Decisions finding no discrimination, the disparity shown in the FY 82 data is so great as to suggest the need to raise standards for Agency Decisions which reject Recommended Decisions finding discrimination.

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[1]The difference between these two figures is due to the fact that not all agencies receiving Recommended Decisions from the Commission are included in this report.

[2]All other actions by the Veterans Administration on findings of no discrimination were modifications, i.e., none was rejected.

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The disparity is particularly apparent for the first five agencies listed. Those agencies might examine relevant decisions to determine why such discrepancies exist between the findings of Complaints Examiners and the agencies themselves.

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TABLE XI

FY 82

AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EOP																		
											TOTAL FY 82							
AGENCY OR DEPARTMENT	# DEC. DECISIONS ACTED ON	PENDING RECONSIDERATION		AGENCY ACTION						PENDING RECONSIDERATION		AGENCY ACTION					
		#	% TOTAL	ACCEPT		MODIFY		REJECT		#	% TOTAL	ACCEPT		MODIFY		REJECT	
				#	%	#	%	#	%			#	%	#	%	#	%
Action	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Admin. Office of the U. S. Courts	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Agency for International Development	6	2	33%	1	50%	1	50%	0	0%	4	67%	4	100%	0	0%	0	0%
Agriculture	12	5	42%	2	40%	1	20%	2	40%	7	58%	5	71%	2	29%	0	0%
Arms Control & Disarmament Agency	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Central Intelligence Agency	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Civil Aeronautics Board	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Commerce	3	2	67%	1	50%	0	0%	1	50%	1	33%	1	100%	0	0%	0	0%
Commission on Civil Rights	4	2	50%	0	0%	0	0%	2	100%	2	50%	2	100%	0	0%	0	0%
Commodity Futures Trading Commission	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Consumer Product Safety Commission	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Defense (Total)	376	104	28%	43	41%	11	11%	50	48%	272	72%	259	95%	6	2%	7	3%
Air Force	54	32	59%	7	22%	8	25%	17	53%	22	41%	22	100%	0	0%	0	0%
Army	195	46	24%	23	50%	1	2%	22	48%	149	76%	145	97%	0	0%	4	3%
Navy	79	17	22%	10	59%	1	6%	6	35%	62	78%	59	95%	2	3%	1	2%
Defense Logistics Agency	29	5	17%	2	40%	1	20%	2	40%	24	83%	19	79%	4	17%	1	4%
Other Defense	19	4	21%	1	25%	0	0%	3	75%	15	79%	14	93%	0	0%	1	7%
Education	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Energy	5	2	40%	2	100%	0	0%	0	0%	3	60%	3	100%	0	0%	0	0%
Environmental Protection Agency	3	1	40%	1	33%	1	33%	1	33%	2	40%	2	100%	0	0%	0	0%

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TABLE XI (cont)

FY 82

AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC

AGENCY OR DEPARTMENT	# DEC. DECISIONS ACTED ON	FINDING DISCRIMINATION		AGENCY ACTION						FINDING NO DISCRIMINATION		AGENCY ACTION					
		#	% Total	ACCEPT #	ACCEPT %	MODIFY #	MODIFY %	REJECT #	REJECT %	#	% Total	ACCEPT #	ACCEPT %	MODIFY #	MODIFY %	REJECT #	REJECT %
Equal Employment Opportunity Comm	9	3	33%	2	67%	1	33%	0	0%	6	67%	6	100%	0	0%	0	0%
Export-Import Bank of the U.S.	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Farm Credit Administration	1	1	100%	1	100%	0	0%	0	0%	0	0%	0	N/A	0	N/A	0	N/A
Fed Communications Commission	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Fed Deposit Insurance Corp	2	2	100%	0	0%	0	0%	2	100%	0	0%	0	N/A	0	N/A	0	N/A
Fed Emergency Management Agency	2	1	50%	0	0%	0	0%	1	100%	1	50%	1	100%	0	0%	0	0%
Fed Home Loan Bank Board	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Fed Labor Relations Authority	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Fed Maritime Commission	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Fed Mediation & Conciliation Service	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Fed Reserve System-Board of Gov	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Fed Trade Commission	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
General Services Administration	15	3	20%	3	100%	0	0%	0	0%	12	80%	12	100%	0	0%	0	0%
Government Printing Office	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Health and Human Services	88	13	15%	7	54%	1	8%	5	38%	75	85%	75	100%	0	0%	0	0%
Housing & Urban Development	5	1	20%	1	100%	0	0%	0	0%	4	80%	4	100%	0	0%	0	0%
Interior	6	0	0%	0	N/A	0	N/A	0	N/A	6	100%	6	100%	0	0%	0	0%
International Communication Agency	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
International Trade Commission	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Interstate Commerce Commission	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%

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TABLE XI (cont)

FY 82

AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC																	
AGENCY OR DEPARTMENT	# DEC. DECISIONS ACTED ON	FINDING DISCRIMINATION		AGENCY ACTION						FINDING NO DISCRIMINATION		AGENCY ACTION					
		#	% Total	ACCEPT #	ACCEPT %	MODIFY #	MODIFY %	REJECT #	REJECT %	#	% Total	ACCEPT #	ACCEPT %	MODIFY #	MODIFY %	REJECT #	REJECT %
Justice	34	29	85%	22	76%	2	7%	5	17%	5	15%	5	100%	0	0%	0	0%
Labor	19	6	32%	4	67%	0	0%	2	33%	13	68%	13	100%	0	0%	0	0%
Merit Systems Protection Board	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Natl Aeronautics & Space Admin	7	1	14%	1	100%	0	0%	0	0%	6	86%	6	100%	0	0%	0	0%
Natl Credit Union Administration	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Natl Endowment for the Arts	1	1	100%	1	100%	0	0%	0	0%	0	0%	0	N/A	0	N/A	0	N/A
Natl Endowment for the Humanities	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Natl Labor Relations Board	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Natl Science Foundation	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Nuclear Regulatory Commission	2	0	0%	0	N/A	0	N/A	0	N/A	2	100%	2	100%	0	0%	0	0%
Occupational Safety & Health Review	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Off/Alaska Natural Gas Trans System	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Office of Personnel Management	5	2	40%	1	50%	0	0%	1	50%	3	60%	3	100%	0	0%	0	0%
Panama Canal Commission	5	1	20%	1	100%	0	0%	0	0%	4	80%	3	75%	0	0%	0	0%
Pension Benefit Guaranty Corp	1	1	100%	1	100%	0	0%	0	0%	0	0%	0	N/A	0	N/A	0	N/A
Postal Service	529	125	24%	55	44%	6	5%	64	51%	404	76%	362	90%	3	1%	39	9%
Railroad Retirement Board	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
Securities & Exchange Commission	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Selective Service System	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Small Business Administration	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%

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TABLE XI (cont)

FY 82

AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC

AGENCY OR DEPARTMENT	# DEC. DECISIONS ACTED ON	FINDING DISCRIMINATION #	FINDING DISCRIMINATION % Total	AGENCY ACTION ACCEPT #	ACCEPT %	MODIFY #	MODIFY %	REJECT #	REJECT %	FINDING NO DISCRIMINATION #	FINDING NO DISCRIMINATION % Total	AGENCY ACTION ACCEPT #	ACCEPT %	MODIFY #	MODIFY %	REJECT #	REJECT %
Soldiers' & Airmen's Home	0	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A	0	N/A
Smithsonian Institution	1	0	0%	0	N/A	0	N/A	0	N/A	1	100%	1	100%	0	0%	0	0%
State Department	4	0	0%	0	N/A	0	N/A	0	N/A	4	100%	4	100%	0	0%	0	0%
Tennessee Valley Authority	13	5	38%	5	100	0	0%	0	0%	8	62%	6	75%	0	0%	2	25%
Transportation	23	15	65%	11	73	2	13%	2	13%	8	35%	7	88%	0	0%	1	13%
Treasury	26	6	23%	0	0%	3	50%	3	50%	20	77%	0	0%	20	100%	0	0%
Veterans Administration	63	27	43%	0	0%	1	4%	26	96%	36	57%	27	75%	9	25%	0	0%
TOTAL	1282	363	28%	166	46	30	8%	167	46%	919	72%	829	90%	41	4%	49	5%

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SECTION IV

COMPLAINTS SUMMARY (Inventory)

Analysis and Conclusions/Recommendations

1. Analysis: The Complaints Summary analysis compared the number of complaints on hand at the beginning of FY 82 to the number of complaints on hand at the end of the FY 82. See Table XII. The amount of change in those two figures determined the rate of the inventory growth.

During FY 82, the government-wide inventory of complaints in process decreased from 15,848 to 15,193, or a decrease of 4%. See Table XIII for a ranking of agencies by growth of inventory during FY 82.

During FY 82, seven agencies reported an inventory growth rate of more than 35%. Of those, only two had an inventory of 20 or more at the beginning of FY 82 and their increases were as follows:

Agency	Inventory 10/01/81	Complaints Filed	Inventory 9/30/82	Rate of Growth From End of FY 81 to End of FY 82
Housing and Urban Development	97	110	133	37%
Department of the Interior	399	235	563	41%

2. Conclusions/Recommendations:

Agencies that are building inventories are doing so at a rate (18% during FY 82) which generates concern. This situation can only be redressed by the introduction of more efficient and cost-effective procedures into the complaint processing system, coupled with improved case management on the part of respondent agencies.

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TABLE XII

FY 82

COMPLAINT SUMMARY							
AGENCY OR DEPARTMENT TOTAL FY 82		COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF OF REPORTING PERIOD	RATE OF INCREASE OR REDUCTION +/-	%
Action		8	1	4	5	(3)	(38%)
Administrative Office of the U.S. Courts		1	4	1	4	3	300%
Agency for International Development		46	10	19	37	(9)	(20%)
Agriculture		381	173	155	401	19	5%
Arms Control and Disarmament Agency		0	1	0	1	1	N/A
Central Intelligence Agency	*	19	6	21	11	(8)	(42%)
Civil Aeronautics Board		0	2	0	2	2	N/A
Commerce	*	205	51	66	161	(44)	(21%)
Commission on Civil Rights	*	14	5	4	15	1	7%
Commodity Futures Trading Commission		10	2	5	7	(3)	(30%)
Consumer Product Safety Commission	*	2	2	2	3	1	50%
Defense (Total)	*	3343	2316	2217	3677	134	4%
Air Force	*	856	610	547	917	61	7%
Army		917	765	726	956	39	4%
Navy	*	899	612	617	1279	380	42%
Defense Logistics Agency		157	138	152	143	(14)	(9%)
Other Defense	*	514	189	175	182	(332)	(65%)
Education		102	25	18	109	7	7%
Energy	*	49	24	33	47	(2)	(4%)

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COMPLAINTS SUMMARY

AGENCY OR DEPARTMENT	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION +/-	%
Environmental Protection Agency	140	40	32	148	8	6%
Equal Employment Opportunity Commission	207	140	134	213	6	3%
Export-Import Bank of the U.S.	4	4	4	6	2	50%
Farm Credit Administration	0	1	1	0	0	0%
Federal Communications Commission	10	1	3	8	(2)	(20%)
Federal Deposit Insurance Corporation	14	1	3	12	(2)	(14%)
Federal Emergency Management Agency	3	9	7	5	2	67%
Federal Home Loan Bank Board *	9	4	10	6	(3)	(33%)
Federal Labor Relations Authority	2	1	2	1	(1)	(50%)
Federal Maritime Commission	0	8	6	2	2	N/A
Federal Mediation and Conciliation Service	4	0	3	1	(3)	(75%)
Federal Reserve System-Board of Governors *	1	1	0	3	2	200%
Federal Trade Commission	6	4	6	4	(2)	(33%)
General Services Administration	112	62	94	80	(32)	(29%)
Government Printing Office	29	23	35	17	(12)	(41%)
Health and Human Services *	690	507	664	621	(69)	(10%)
Housing and Urban Development *	97	110	56	132	36	37%
Interior *	399	235	116	561	166	42%
International Communication Agency *	8	4	5	8	0	0%

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FY 82

COMPLAINTS SUMMARY							
AGENCY OR DEPARTMENT		COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION	
						+/-	%
International Trade Commission		3	8	6	5	2	67%
Interstate Commerce Commission	*	9	9	6	9	0	0%
Justice	*	535	263	206	593	58	11%
Labor		168	95	108	155	(13)	(8%)
Merit Systems Protection Board		5	5	2	8	3	60%
National Aeronautics and Space Administration		35	15	14	36	1	3%
National Credit Union Administration		0	3	3	0	0	0%
National Endowment for the Arts	*	5	1	2	3	(2)	(40%)
National Endowment for the Humanities	*	1	0	0	0	(1)	(100%)
National Labor Relations Board		17	5	13	10	(7)	(41%)
National Science Foundation		3	2	0	5	2	67%
Nuclear Regulatory Commission	*	8	1	1	8	0	0%
Occupational Safety and Health Review Commission		0	0	0	0	0	0%
OPI/Alaska Natural Gas Transportation System		0	0	0	0	0	0%
Office of Personnel Management	*	31	29	23	35	4	13%
Panama Canal Commission		15	15	16	14	(1)	(7%)
Pension Benefit Guaranty Corporation		10	0	1	9	(1)	(10%)
Postal Service		6574	8023	9322	5275	(1299)	(20%)
Railroad Retirement Board		10	3	8	5	(5)	(50%)

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TABLE XII (cont.)

FY 82

COMPLAINTS INVENTORY						
AGENCY OR DEPARTMENT	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION	
					+/-	%
Securities and Exchange Commission	16	3	10	9	(7)	(44%)
Selective Service System	0	0	0	0	0	0%
Soldiers and Airmens Home	0	1	0	1	1	N/A
Small Business Administration *	60	38	38	61	1	2%
Smithsonian Institute	15	13	9	19	4	27%
State Department	36	26	15	47	11	31%
Tennessee Valley Authority *	284	212	192	308	24	(8%)
Transportation	334	258	248	334	10	3%
Treasury *	619	444	379	743	123	20%
Veterans Administration	1148	622	380	1390	243	21%
Total	15,048	13,861	14,730	15,193	(655)	(4%)
* Reported figure for beginning of period did not equal figure for end of previous period.						

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TABLE XIII

RANKING OF ALL REPORTING AGENCIES (LOWEST TO HIGHEST) BY

RATE OF GROWTH OF INVENTORY DURING FY 82

Agency	Percent Change in Inventory from Beginning FY 82 to End FY 82
Federal Mediation & Conciliation Service	(75)[1]
National Endowment for the Arts	(60)
Federal Labor Relations Authority	(50)
Railroad Retirement Board	(50)
Securities and Exchange Commission	(44)
Central Intelligence Agency	(42)
Government Printing Office	(41)
National Labor Relations Board	(41)
ACTION	(38)
Federal Home Loan Bank Board	(33)
Federal Trade Commission	(33)
Commodity Futures Trading Comm.	(30)
General Services Administration	(29)
Commerce	(21)
Agency for International Development	(20)
Federal Communications Comm.	(20)
Postal Service	(20)
Federal Deposit Insurance Corp.	(14)
Health and Human Services	(10)
Pension Benefit Guaranty Corp.	(10)
Labor	(8)
Tennessee Valley Authority	(8)
Commission On Civil Rights	(7)
Panama Canal Commission	(7)
Energy	(4)
National Endowment for the Humanities	0
Farm Credit Administration	0
International Communications Agency	0
Interstate Commerce Commission	0
National Credit Union Administration	0
Nuclear Regulatory Commission	0
Occupational Safety & Health Review Comm.	0
OPI/Alaska National Gas Trans. System	0
Selective Service System	0
Small Business Administration	2
Defense (Total)	3
Equal Employment Opportunity Comm.	3
National Aeronautics & Space Administration	3
Transportation	3

[1]Parentheses indicate a negative growth rate, i.e., a decrease in inventory.

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TABLE XIII (con't)

Agency	Percent Change in Inventory from Beginning FY 82 to End FY 82
Agriculture	5
Environmental Protection Agency	6
Justice	11
Office Of Personnel Management	13
Education	17
Treasury	20
Veterans Administration	21
Smithsonian Institution	27
State	31
Housing and Urban Development	37
Interior	41
Consumer Product Safety Commission	50
Export-Import Bank	50
Federal Reserve Board	50
Merit Systems Protection Board	60
Federal Emergency Management Agency	67
International Trade Commission	67
National Science Foundation	67
Administrative Office of the U.S. Courts	380
Arms Control & Disarmament Agency	N/A
Civil Aeronautics Board	
Federal Maritime Commission	
Soldiers' & Airmen's Home	

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APPENDIX

COUNSELING CONTACTS AND COMPLAINTS FILED, BY

AGENCY AND NUMBER OF FULL-TIME POSITIONS

I. Analysis

In this section, data concerning agency counseling and complaints filed were examined in the context of the number of full-time positions in the agency. See Table A. Three comparisons were made: (1) persons counseled as a percent of total full-time positions; (2) percent of counseling contacts resulting in formal complaints; and (3) complaints filed as a percent of total full-time positions.[1]

The mean of persons receiving counseling as a percent of total full-time positions was 2.1%, virtually the same as the FY 81 figure of 2.02%; the median[1] was 1.2%, down slightly from 1.6% in FY 81; the median (adjusted to exclude agencies with fewer than 20 contacts) was 2.3%, up from FY 81's figure of 1.5%.

As to the percent of counseling contacts resulting in formal complaints: the mean was 23%, the same as FY 81's figure; the median was 22%, lower than the FY 81 figure of 31%; and the median (adjusted to exclude agencies with fewer than 20 contacts) was 23%, lower than FY 81's figure of 30%.

The mean of complaints filed as a percent of the number of full-time permanent agency employees (adjusted to exclude agencies not reporting the number of full-time positions) was 0.48%, up slightly from FY 81's figure of 0.46%; the median, so adjusted, was 0.3%, down from the FY 81 figure of 0.4%; and the median adjusted to exclude agencies with fewer than 20 contacts was 0.4%, the same as in FY 81.

II. Conclusions/Recommendations

Too many potential factors may affect the number of employees seeking counseling and filing complaints in a given agency to draw any firm conclusions concerning an agency's management or EEO climate from this data.

For example, the percentage of an agency's workforce that is minority and/or female might affect the number of people seeking counseling; the advice given by an agency's exclusive representative about filing a complaint might influence the number of informal contacts that become formal complaints; the kind and amount of training received by an agency's EEO counselors, as well as the grade level of the EEO counselors, could affect the number of informal contacts that become formal complaints; and the general level of sophistication among employees about civil rights law and its enforcement could also affect the rate of complaint filing.

[1]The number is adjusted to exclude the agencies whose number of full-time positions has not been reported.

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TABLE A

FY 82

COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS						
AGENCY OR DEPARTMENT	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	PERSONS COUNSELED AS A % OF TOTAL POSITIONS	COMPLAINTS FILED AS A % OF TOTAL POSITIONS
Action	547	12	1	8%	2%	.2%
Admin. Office of the U. S. Courts	501	29	4	14%	6%	1%
Agency for International Development	3,705	130	10	8%	4%	.3%
Agriculture	120,000	866	173	20%	1%	.1%
Arms Control & Disarmament Agency	121	1	1	100%	1%	1%
Central Intelligence Agency	Classified	29	6	21%	N/A	N/A
Civil Aeronautics Board	480	3	2	67%	1%	.4%
Commerce	32,100	299	51	17%	1%	1%
Commission on Civil Rights	229	10	5	50%	4%	2%
Commodity Futures Trading Commission	473	8	2	25%	2%	.4%
Consumer Product Safety Commission	579	2	2	100%	.3%	.3%
Defense (Total)	1,133,923	11,795	2,316	20%	1%	.2%
Air Force	256,263	3,299	610	18%	1%	.2%
Army	384,000	1,235	765	62%	.3%	.2%
Navy	314,821	3,775	612	16%	1%	.2%
Defense Logistics Agency	45,903	2,515	138	5%	5%	.3%
Other Defense	132,936	971	189	19%	1%	.1%
Education	5,070	64	25	39%	1%	1%

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TABLE A (cont)

FY 82

COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS						
AGENCY OR DEPARTMENT	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	PERSONS COUNSELED AS A % OF TOTAL POSITIONS	COMPLAINTS FILED AS A % OF TOTAL POSITIONS
Energy	17,945	75	24	32%	.4%	.1%
Environmental Protection Agency	9,536	382	60	16%	3%	.6%
Equal Employment Opportunity Comm	3,300	166	140	84%	5%	4%
Export-Import Bank of the U.S.	326	7	6	86%	2%	2%
Farm Credit Administration	287	15	1	7%	5%	.3%
Fed Communications Commission	1,933	19	1	5%	1%	.1%
Fed Deposit Insurance Corp	3,485	11	1	9%	.3%	.03%
Fed Emergency Management Agency	2,500	77	9	12%	3%	.4%
Fed Home Loan Bank Board	1,540	11	4	36%	1%	.3%
Fed Labor Relations Authority	274	39	1	3%	14%	.4%
Fed Maritime Commission	275	24	8	33%	9%	3%
Fed Mediation & Conciliation Service	358	1	0	0%	.3%	0%
Fed Reserve System-Board of Gov	1,503	4	1	25%	.3%	.1%
Fed Trade Commission	1,636	37	4	13%	2%	.2%
General Services Administration	29,376	1,095	62	6%	4%	.2%
Government Printing Office	6,032	68	23	34%	1%	.4%
Health and Human Services	154,000	1,201	507	42%	1%	.3%
Housing & Urban Development	14,200	311	110	35%	2%	1%

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TABLE A (cont)

FY 82

COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS						
AGENCY OR DEPARTMENT	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	PERSONS COUNSELED AS A % OF TOTAL POSITIONS	COMPLAINTS FILED AS A % OF TOTAL POSITIONS
Interior	79,402	974	235	24%	1%	.3%
International Communication Agency	4,304	11	4	36%	.2%	.2%
International Trade Commission	446	23	8	35%	5%	2%
Interstate Commerce Commission	1,344	97	9	93%	7%	2%
Justice	55,891	802	263	33%	1%	.5%
Labor	19,145	215	95	44%	1%	.5%
Merit Systems Protection Board	397	14	5	36%	4%	1%
Natl Aeronautics & Space Admin	21,186	48	15	31%	2%	.1%
Natl Credit Union Administration	685	3	3	100%	.4%	.4%
Natl Endowment for the Arts	316	27	1	4%	9%	.3%
Natl Endowment for the Humanities	251	23	0	0%	9%	0%
Natl Labor Relations Board	2,619	31	5	16%	1%	.2%
Natl Science Foundation	1,242	12	2%	17%	1%	.2%
Nuclear Regulatory Commission	3,220	6	1%	17%	.2%	.02%
Occupational Safety & Health Review	111	0	0	0%	0%	0%
OPI/Alaska Natural Gas Trans System	89	0	0	0%	0%	0%
Office of Personnel Management	4,933	108	29	27%	2%	1%
Panama Canal Commission	8,329	65	15	23%	1%	.2%

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TABLE A (cont)

FY 82

COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS						
AGENCY OR DEPARTMENT	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	PERSONS COUNSELED AS A % OF TOTAL POSITIONS	COMPLAINTS FILED AS A % OF TOTAL POSITIONS
Pension Benefit Guaranty Corp	446	19	0	0%	4%	0%
Postal Service	653,177	33,399	8,023	24%	5%	1%
Railroad Retirement Board	1,535	16	3	19%	1%	.2%
Securities & Exchange Commission	1,428	94	3	3%	7%	.2%
Selective Service System	243	2	0	0%	1%	0%
Small Business Administration	4,192	135	28	21%	3%	1%
Soldiers' & Airmen's Home	967	7	1	14%	1%	.1%
Smithsonian Institution	3,060	34	13	38%	1%	.4%
State Department	10,720	18	26	144%	.2%	.2%
Tennessee Valley Authority	39,899	1,261	212	17%	3%	1%
Transportation	60,698	2,083	258	12%	3%	.4%
Treasury	120,399	1,730	444	26%	1%	.4%
Veterans Administration	228,071	2,088	622	30%	1%	.3%
TOTAL	2,875,327	60,009	13,861	23%	2.1%	.5%

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Report on Precomplaint Processing and Complaint Processing

For FY - 83

Prepared By PUBLIC SECTOR PROGRAMS

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ANALYSIS OF PRE-COMPLAINT COUNSELING AND COMPLAINT PROCESSING DATA

SUBMITTED BY FEDERAL AGENCIES FOR FISCAL YEAR 1983

Equal Employment Opportunity Commission
Office of Program Operations
Public Sector Programs
Federal Sector Program Division

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ANALYSIS OF PRE-COMPLAINT COUNSELING AND COMPLAINT PROCESSING DATA

SUBMITTED BY FEDERAL AGENCIES FOR FISCAL YEAR 1983

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ATTACHMENT 1 - EEOC FORM 462

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INTRODUCTION

A. Background

This is the third published report of federal agency pre-complaint counseling and complaint processing data. It is based on Fiscal Year 1983 statistical data received from 60 agencies on Equal Employment Opportunity Commission (EEOC) Form No. 462 (see Attachment 1). Each of these agencies employs 100 or more personnel; in this report, "government-wide" is used to refer to data submitted by these 60 agencies.

Heads of all federal agencies having fewer than 100 employees are responsible for maintaining data on discrimination complaint activities and submitting said data to EEOC upon request.

Data analyzed in this report cover the pre-appellate portion of the complaint process. This portion of the system operates as follows:

- A Federal Government applicant or employee who believes s/he has been discriminated against takes the problem to an agency EEO counselor, who attempts to resolve it.
- Should the counselor's efforts fail, the person may file a formal complaint which the agency investigates.
- Upon completing its investigation, the agency makes the case records available to the complainant and attempts to settle the matter.
- Should the attempt at settlement fail, the agency presents the complainant with a proposed disposition of the case.
- The complainant can accept the proposal or request an agency decision with or without a hearing before an EEOC Complaints Examiner.
- If a hearing is requested, the case is sent to EEOC. A Complaints Examiner then holds a hearing on the matter and issues a Recommended Decision to the agency.
- The agency then issues a decision which may or may not concur with the recommendations made by the EEOC's Complaints Examiner.

B. Organization and Methodology

This report is divided into five sections. Each of the following sections contains an analysis of agency-provided data, from which, in most instances, conclusions are drawn and/or recommendations are made. The tables in the appendix of this report are:

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- Table I - Complaints Inventory Summary for FY-83;
- Table II - Counseling and Complaint Filing by Agency and Number of Full Time Positions for FY-83;
- Table III - Agency Closure Rates by Type of Closure for FY-83;
- Table IV - Average Number of Days to Closure By Type of Closure for FY-83; and
- Table V - Agency Actions on Recommended Decisions Received from EEOC for FY-83.

Collection, computation, and analysis of the statistical data were done manually. Statistical significance tests or other statistical refinements were not used. Nevertheless, to avoid distortion that can be introduced when very small numbers are involved, the analyses are based on the principle not to attach significance to actions taken on a given group of complaints if that group of complaints is less than 20 in number.

Both means and medians are provided for some of the data analysed. The mean provides a measure of performance of an agency compared with the Federal Government as a whole. The median provides a measure against which a particular agency's performance may be compared with other agencies' performances. For this report, the mean is the arithmetic average number; and the median is the number in an ordered set of values below and above which there are an equal number of values. This report contains some analyses in which an adjusted mean or median is used; that is, the means and the medians have been adjusted to exclude agencies for which the data are incomplete or which had fewer than 20 complaints in the category being analysed.

C. Summary of Findings

The data in this report justify the need for a revision of the entire complaint processing system. The following is a summary of the findings of this report:

- While the government-wide inventory rose 18% over the last three years, the number of complaints filed rose by 24% for the same period.

- Too many complaints are entering the system that do not belong in the system. Complaints are rejected because they are filed untimely, do not fall within the purview of the regulations or because the issue filed is identical to an issue previously filed. The mean percentage of complaints closed due to rejection in the federal sector was 15%. In the private sector, only 4% of the complaints were closed due to rejection during FY-83.

- Time required to process complaints to a final decision varies a great deal from agency to agency but in most cases is much too long. For example, the complaint processing time to closure by agency decision varied from approximately 55 days to 3507 days, or approximately 10 years. The government-wide mean was 524 days to closure by agency decision.

- Agencies with higher rates of withdrawals by complainants tend to take longer in processing complaints.

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- Although settlements take more than twice as long to achieve than in the private sector, an appropriate number of complaints are being closed by settlement. This is consistent with the overall focus of Title VII of the Civil Rights Act and of the Age Discrimination in Employment Act on conciliation of disputes.

- Agencies continue to accept far more Recommended Decisions finding no discrimination than those finding discrimination. When an EEOC Complaints Examiner issues a Recommended Decision finding no discrimination, agencies accept 92% of these Recommended Decisions without modification. When an EEOC Complaints Examiner issues a Recommended Decision finding discrimination, agencies accept 50% and modify 40% of these Recommended Decisions.

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SECTION I

COMPLAINTS INVENTORY

In this section of the report, the number of complaints on hand at the beginning of the reporting period is compared to the number of complaints on hand at the end of the reporting period. The numerical change in those two figures is the rate of inventory growth or reduction.

A. ANALYSIS

The following chart shows the government-wide rate of growth or reduction in the inventory for FY-81, FY-82 and FY-83:

	A	B (+)	C (-)	E (=)	RATE OF INVENTORY GROWTH OR REDUCTION	
GOV'T WIDE	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	COMPLAINTS FILED DURING THE REPORTING PERIOD	COMPLAINTS CLOSED DURING THE REPORTING PERIOD	COMPLAINTS ON HAND AT END OF REPORTING PERIOD	NUMBER	%
FY-81	13,734	13,525	11,457	15,802	2,068	15%
FY-82	15,848	13,861	14,720	15,193	(655)	(4%)
FY-83	15,259	16,770	15,770	16,259	1000	6.5%

Thus, between the beginning of FY-81 and the end of FY-83 the government-wide inventory growth rate was 18%. This was due in large part to the increase in the number of complaints filed: the number of complaints filed in FY-83 represented a 24% increase over the number filed in FY-81.

Table I shows inventory increase/decrease data for all agencies during FY-83.

During FY-83, the government-wide inventory of complaints in process increased from 15,259 to 16,259, which is a growth rate of 6.5%. More complaints were closed government-wide during the reporting period than were on hand at the beginning of the reporting period. The impact of this accomplishment was diminished by the significant increase in the number of complaints filed: a 21% increase over the prior year. Therefore, the overall change was an increase in the number of complaints on hand at the end of the reporting period.

Fifteen agencies reported an inventory growth rate of more than 10%. Of those 15, only four had an inventory of 20 or more at the beginning of FY-83 and their inventory increases were as follows:

Agency	Inventory 10/01/82	Inventory 9/30/83	Rate of Growth From Start of FY-83 to End of FY-83
Treasury	742	893	20.4%
Veterans Administration	1390	1674	20.4%

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Housing and Urban Development	133	151	13.5%
Postal Service	5275	5886	11.6%

Conversely, twenty-one agencies reported an inventory reduction rate of more than 10% during FY-83. Of those 21, only seven had an inventory of 20 or more at the beginning of FY-83 and their decreases in inventory were as follows:

Agency	Inventory 10/01/82	Inventory 9/30/83	Rate of Reduction From Start of FY-83 to End of FY-83
Agency for International Development	31	23	25.8%
Tennessee Valley Authority	301	228	24.3%
NASA	35	28	20.0%
Office of Personnel Management	35	29	17.1%
Education	109	96	11.9%
Transportation	334	296	11.4%
Energy	47	42	10.6%

The following chart illustrates ranking of agencies by inventory growth rate:

Agency	Percent Change in Inventory from Beginning FY-83 to End FY-83
Federal Labor Relations Authority	(100)[1]
Federal Mediation & Conciliation Service	(100)
Railroad Retirement Board	(60)
Civil Aeronautics Board	(50)
Federal Communications Commission	(40)
Federal Emergency Management Agency	(40)
International Trade Commission	(40)
Merit Systems Protection Board	(38)
Federal Deposit Insurance Corporation	(33)
Commission On Civil Rights	(33)
Commodity Futures Trading Commission	(29)
Central Intelligence Agency	(27)
Agency for International Development	(26)
Tennessee Valley Authority	(24)
National Aeronautics & Space Administration	(20)
National Science Foundation	(20)
Office Of Personnel Management	(17)
Nuclear Regulatory Commission	(13)
Education	(12)
Transportation	(11)
Energy	(11)
Commerce	(8)

1 Parentheses indicate a negative growth rate (i.e., a decrease in inventory).

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Agency	Percent Change in Inventory from Beginning FY-83 to End FY-83
Environmental Protection Agency	(7)
Small Business Administration	(7)
Government Printing Office	(6)
Labor	(5)
Smithsonian Institution	(5)
Agriculture	(2)
Interior	(1)
National Endowment for the Arts	0
Arms Control & Disarmament Agency	0
Pension Benefit Guaranty Corporation	0
Federal Maritime Commission	0
Panama Canal Commission	0
United States Information Agency	0
Defense (Total)	1
Justice	4
Health and Human Services	5
State	6
Equal Employment Opportunity Commission	7
General Services Administration	10
Postal Service	12
Housing and Urban Development	14
Federal Home Loan Bank Board	14
Treasury	20
Veterans Administration	20
Interstate Commerce Commission	23
Federal Trade Commission	25
Export-Import Bank	25
Administrative Office of the U.S. Courts	50
Federal Reserve Board	67
Action	80
Securities and Exchange Commission	89
National Labor Relations Board	91
Consumer Product Safety Commission	100
Soldiers' & Airmen's Home	300
Farm Credit Administration	N/A
National Endowment for the Humanities	N/A
National Credit Union Administration	N/A
Selective Service System	N/A

B. CONCLUSIONS/RECOMMENDATIONS

The growth in inventories of federal agencies can be reduced by revising the complaint processing system to make it more efficient and cost-effective. Until such a revision can be implemented, agencies should improve their case management systems, develop more effective case monitoring and tracking systems, and attempt to settle complaints during all stages of the complaint processing procedure.

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SECTION II

COUNSELING CONTACTS AND COMPLAINTS FILED, BY AGENCY AND NUMBER OF FULL-TIME POSITIONS

An applicant or employee who believes s/he has been discriminated against may take the problem to an agency EEO counselor, who attempts to resolve it. Should the counselor's efforts fail, the person may file a formal complaint. In this section, data concerning agency counseling and complaints filed are examined.

The number of persons receiving counseling per 1000 full-time permanent agency employees (adjusted to exclude agencies not reporting the number of full-time positions) rose between FY-81 and FY-83: the average number was 20.2 in FY-81; 21.0 in FY-82; and 25.7 in FY-83. The number of complaints filed per 1000 full-time permanent agency employees (adjusted to exclude agencies not reporting number of full-time positions) also rose over the same time period: The average number was 4.6 in FY-81; 4.8 in FY-82; and 5.8 in FY-83. The number of complaints filed as a percent of counseling contacts remained steady: it was 23.0% in FY-81 and FY-82; and decreased slightly to 22.6% in FY-83.

The number of persons counseled and complaints filed by agency are displayed in Table II. Although 22 categories of issues are listed on EEOC Form 462, more than 40% of all issues alleged were concentrated in only four categories (promotion, harassment (non-sexual), reprimand, and termination). The following chart provides data about the issues alleged in formal complaints:

Issue Alleged	# of allegations	% of total allegations in complaints filed
Promotion	3,187	14.3
Harassment (non-sexual)	2,029	9.1
Reprimand	2,024	9.1
Termination	1,748	7.8
Suspension	1,518	6.8
Appointment	887	4.0
Reassignment	810	3.6
Time and Attendance	785	3.5
Assignment of Duties	692	3.1
Non-merit pay	666	3.0
Working Conditions	599	2.7
Training	546	2.4
Reinstatement	477	2.1
Merit Pay	406	1.8
Duty Hours	365	1.6
Pay/including overtime	309	1.4

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Sexual Harassment	190	0.8
Awards	129	0.6
Examination test	55	0.2
Conversion to full-time	49	0.2
Retirement	40	0.2
Other	4,779[1]	21.4

More than one-third of all alleged bases were concentrated in the categories of race (Black) and sex (female). It should be noted that complainants often allege more than one issue and/or basis. Data about bases alleged in formal complaints are shown in the following chart:

Bases Alleged	# of allegations	% of total bases alleged in complaints filed
Race, Black	5,629	22.7
Sex, Female	3,520	14.2
Race, Other	2,607	10.5
Reprisal	2,539	10.2
Sex, Male	2,227	9.0
Age	2,096	8.5
Handicap, Physical	1,719	6.9
Race, White	1,631	6.6
National Origin, Hispanic	918	3.7
National Origin, Other	824	3.3
Religion	758	3.1
Handicap, Mental	329	1.3

[1]Several agencies with large work loads are misreporting issues, in that they are reporting that most allegations raise issues other than the 20 listed on the reporting form.

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SECTION III

COMPLAINT CLOSURES

Complaints are closed by rejection, cancellation, withdrawal, settlement or agency decision. Government-wide and agency data are provided for each of these types of closure below and in Table III.

A. Rejections

A complaint may be rejected because it is untimely, outside the purview of the regulations (lack of jurisdiction), and/or because the complaint is identical to one previously filed.

1. ANALYSIS

The following charts show the percentages of all complaints closed which were closed by rejection in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	16.0%	9.0%
FY-82	15.0%	9.0%
FY-83	15.4%	8.0%

Agencies with 20 or more closures.

	Mean	Median
FY-81	16.5%	12.0%
FY-82	15.1%	13.0%
FY-83	15.4%	10.9%

Of agencies closing 20 or more complaints, the following rejected complaints at rates higher than the mean and median rates for all agencies: the Office of Personnel Management rejected complaints at a rate more than three times the mean rate - 53.6% (15 rejections of 28 closures); General Services Administration at a rate of 18.3% (17 rejections of 93 closures); Postal Service at a rate of 17.8% (1,782 rejections of 9,994 closures); and Energy at a rate of 16.7% (5 rejections of 30 closures). The following chart illustrates a ranking of agencies with 20 or more closures by percentage of closures that were rejections:

Agency	Total Closures	Closures by Rejection	% of Closures by Rejection
National Aeronautics & Space Admin.	27	0	0.0
Education	31	0	0.0
Small Business Adminstration	30	1	3.3
Interior	168	8	4.8
Agriculture	199	12	6.0
Equal Employment Opportunity Comm.	90	6	6.7
Justice	181	13	7.2
Commerce	75	6	8.0
Transportation	271	24	8.9

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Agency	Total Closures	Closures by Rejection	% of Closures by Rejection
Health and Human Services	479	48	10.0
Environmental Protection Agency	64	7	10.9
Tennessee Valley Authority	234	26	11.1
Defense (Total)	2,771	319	11.5
Labor	121	14	11.6
Treasury	291	34	11.7
Housing and Urban Development	85	11	12.9
Veterans Administration	316	46	14.6
Energy	30	5	16.7
Postal Service	9,994	1782	17.8
General Services Administration	94	17	18.1
Office of Personnel Management	28	15	53.6

2. CONCLUSIONS/RECOMMENDATIONS

From FY-81 through FY-83, the mean percentage of closures by rejection has remained relatively constant. While 15% of federal complaints were closed due to rejection, the percentage of charges closed in the private sector charge processing system for the same reasons was only 4% during FY-83. This contrast is significant. Federal complainants generally complete a complaint form or letter without assistance from a person who has expertise in the area of EEO law. This lack of professional assistance may contribute to the large number of complaints which are rejected because they are beyond the purview of the regulations.

B. Cancellations

Complaints are cancelled when the complainant fails to prosecute the claim. The following charts show the percentages of all complaints closed which were closed by cancellation in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	6.0%	0.0%
FY-82	6.0%	0.0%
FY-83	6.2%	3.2%

Agencies with 20 or more closures.

	Mean	Median
FY-81	5.4%	5.0%
FY-82	5.6%	6.0%
FY-83	6.1%	9.4%

The three agencies with the highest percentages in this category were: The Department of Commerce (14.7% 11 cancellations of 75 closures); the Department of Labor (14.0% - 17 cancellations of 121 closures); and Small Business Administration (13.3% - 4 cancellations of 30 closures). The following chart illustrates a ranking of agencies with 20 or more closures by the percentage of closures that were cancellations:

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Agency	Total Closures #	Closures by Cancellation	% of Closures by Cancellation
Commerce	75	11	14.7
Labor	121	17	14.0
Small Business Adminstration	30	4	13.3
Equal Employment Opportunity Comm.	90	11	12.2
Veterans Administration	316	38	12.0
Transportation	271	30	11.1
General Services Administration	94	10	10.6
Justice	181	19	10.5
Energy	30	3	10.0
Housing and Urban Development	85	8	9.4
Environmental Protection Agency	64	6	9.4
Treasury	291	20	6.9
Defense (Total)	2,771	173	6.2
Postal Service	9,994	573	5.7
Tennessee Valley Authority	234	9	3.8
National Aeronautics & Space Admin.	27	1	3.7
Office of Personnel Management	28	1	3.6
Education	31	1	3.2
Health and Human Services	479	10	2.1
Agriculture	199	4	2.0
Interior	168	1	0.6

C. Withdrawals

A complaint may be closed by withdrawal at any time after the complaint has been filed. Agencies have been advised to report withdrawals with corrective action as settlements.

1. ANALYSIS

The following charts show the percentages of all complaints closed which were closed by withdrawal in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	34.0%	19.0%
FY-82	22.0%	9.0%
FY-83	18.7%	7.4%

Agencies with 20 or more closures.

	Mean	Median
FY-81	34.3%	32.0%
FY-82	21.9%	19.0%
FY-83	18.8%	12.8%

Of the agencies with 20 or more closures, the three agencies with the highest percentages in this category were: the Department of the Treasury (32.3% - 94 withdrawals of 291 closures); the Veterans Administration (29.4% - 93 withdrawals of 316 closures); and the Department of Education (29% - 9 withdrawals of 31 closures).

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The following chart illustrates a ranking of agencies with 20 or more closures by percentage of closures that were withdrawals:

Agency	Total Closures	Closures by Withdrawals	% of Closures by Withdrawals
Small Business Adminstration	30	0	0.0
Interior	168	0	0.0
Office of Personnel Management	28	1	3.6
Agriculture	199	7	3.5
Labor	121	5	4.1
Tennessee Valley Authority	234	11	4.7
Commerce	75	4	5.3
National Aeronautics & Space Admin.	27	2	7.4
Housing and Urban Development	85	9	10.6
Equal Employment Opportunity Comm.	90	10	11.1
General Services Administration	94	12	12.8
Health and Human Services	479	62	12.9
Energy	30	4	13.3
Justice	181	26	14.4
Transportation	271	46	17.0
Defense (Total)	2,771	492	17.8
Postal Service	9,994	2027	20.3
Environmental Protection Agency	64	14	21.9
Education	31	9	29.0
Veterans Administration	316	93	29.4
Treasury	291	94	32.3

2. CONCLUSIONS/RECOMMENDATIONS

From FY-81 through FY-83, the government-wide rate at which complaints are closed by withdrawal decreased from a mean of 34% to 18.8%.

The three agencies with the highest rates of withdrawals (Treasury, Veterans Administration and Education) had a consistently higher-than-average number of days to closures of all types. Complainants may withdraw at higher rates at these agencies because of the longer processing times. Thus, agencies that decrease processing times could reduce the number of withdrawals by complainants.

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D. Settlements

A settlement may occur at any time after the complaint has been filed. A settlement is a written agreement signed by the complainant and an agency official.

1. ANALYSIS

The following charts show the government-wide percentages of complaints which were closed by settlement in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	11.0%	7.0%
FY-82	28.0%	18.0%
FY-83	31.4%	25.0%

Agencies with 20 or more closures.

	Mean	Median
FY-81	11.2%	9.0%
FY-82	28.3%	25.0%
FY-83	31.4%	22.2%

Of agencies with 20 or more closures, the Office of Personnel Management had the lowest settlement rate, 3.6% (1 settlement of 28 closures). The following chart illustrates a ranking of agencies with 20 or more closures by percentage of closures that were settlements:

Agency	Total Closures	Closures by Settlements	% of Closures by Settlements
Interior	168	132	78.6
Agriculture	199	108	54.3
National Aeronautics & Space Admin.	27	14	51.9
Labor	121	50	41.3
General Services Administration	94	36	38.3
Postal Service	9,994	3579	35.8
Justice	181	61	33.7
Commerce	75	22	29.3
Education	31	9	29.0
Small Business Adminstration	30	8	26.7
Tennessee Valley Authority	234	52	22.2
Treasury	291	63	21.6
Transportation	271	56	20.7
Defense (Total)	2,771	542	19.6
Equal Employment Opportunity Comm.	90	17	18.9
Housing and Urban Development	85	15	17.6
Health and Human Services	479	79	16.5
Environmental Protection Agency	64	10	15.6
Energy	30	4	13.3
Veterans Administration	316	37	11.7
Office of Personnel Management	28	1	3.6

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The four agencies with more than 20 total closures during FY-83 that had the highest percentages of settlement were: the Department of the Interior (78.6% - 132 settlements of 168 closures); the Department of Agriculture (54.3% - 108 settlements of 199 closures) the National Aeronautics and Space Administration (51.9% - 14 settlements of 27 closures); the Department of Labor (41.3% - 50 settlements of 121 closures); and the General Services Administration (38.3% - 36 settlements of 94 closures).

As part of the hearings process, EEOC Complaints Examiners attempt settlement of complaints. During FY-83, 35% of the cases closed by EEOC Complaints Examiners were settled, identical to the FY-82 rate of 35%. These actions constituted approximately 10% of all settlements achieved in the federal sector administrative complaint process during FY-83.

2. CONCLUSION

From FY-81 through FY-83, the government-wide rate at which complaints were closed by settlement continued to increase. This is consistent with the overall focus of Title VII of the Civil Rights Act and the Age Discrimination in Employment Act on conciliation of disputes.

E. Agency Decisions on the Merits:

An agency decision on the merits is either a finding of discrimination or of no discrimination which is rendered by the agency after the complainant has had an opportunity to review the agency's proposed disposition and, if so requested, has received a hearing and a recommended decision by an EEOC Complaints Examiner.

1. ANALYSIS

The following charts show the percentages of complaints which were closed by agency decisions on the merits in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	33.0%	33.0%
FY-82	29.0%	33.0%
FY-83	28.4%	37.0%

Agencies with 20 or more closures.

	Mean	Median
FY-81	32.6%	34.0%
FY-82	29.1%	38.0%
FY-83	28.3%	38.7%

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The following chart shows those agencies, of agencies with 20 or more closures, that processed 50% or more of their complaints to agency decision:

AGENCY	TOTAL NUMBER OF COMPLAINTS CLOSED	COMPLAINTS CLOSED BY AGENCY DECISIONS	
		TOTAL NUMBER	PERCENTAGE
Health and Human Services	479	280	58.5%
Tennessee Valley Authority	234	136	58.1%
Small Business Administration	30	17	56.7%
Air Force	741	404	54.5%
Army	636	341	53.6%
Equal Employment Opportunity Commission	90	46	51.1%

The following chart illustrates a ranking of agencies with 20 or more closures by the percentage of closures that were agency decisions.

Agency	Total Closures	Closures by Agency Decisions	% of Closures by Agency Decisions
Interior	168	27	16.1
General Services Administration	94	19	20.2
U.S. Postal Service	9994	2033	20.3
Treasury	291	80	27.5
Labor	121	35	28.9
Veterans Administration	316	102	32.3
Agriculture	199	68	34.2
Justice	181	62	34.3
Office of Personnel Management	28	10	35.7
National Aeronautics & Space Admin.	27	10	37.0
Education	31	12	38.7
Environmental Protection Agency	64	27	42.2
Transportation	271	115	42.4
Commerce	75	32	42.7
Defense	2771	1245	44.9
Energy	30	14	46.7
Housing & Urban Development	85	42	49.4
Equal Employment Opportunity Comm.	90	46	51.1
Small Business Administration	30	17	56.7
Tennessee Valley Authority	234	136	58.1
Health and Human Services	479	280	58.5

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2. CONCLUSION

A major objective of the discrimination complaint processing system is resolving complaints at the earliest possible stage.

Government-wide, from FY-81 through FY-83, the rate at which complaints are closed by agency decision has continued to decrease. Approximately 72% of the cases are resolved prior to agency decision.

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SECTION IV

AVERAGE NUMBER OF DAYS TO CLOSURE, BY TYPE OF CLOSURE

Data covering the average number of days to closure by type were reported in the following five categories: Rejections, Cancellations, Withdrawals, Settlements, and Agency Decisions. The overall average time frame for all closures was 308 days in FY-83, as compared to 374 days in FY-82 and 303 days in FY-81. Table IV shows average number of days to each type of closure and for all closures for all reporting agencies.

A. Rejection:

A complaint may be rejected because it is untimely, because it is outside the purview of the regulations (lack of jurisdiction), and/or because the complaint is identical to one previously filed.

1. ANALYSIS

The following charts show the average number of days to closure by rejection in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	134	128
FY-82	130	131
FY-83	88	93

Agencies with 20 or more closures.

	Mean	Median
FY-81	134	133
FY-82	130	136
FY-83	88	105

The following three agencies required considerably longer periods of time to close by rejection than most: the Environmental Protection Agency (389 days); the Department of Agriculture (339 days); and the Department of the Treasury (281 days).

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The following chart illustrates a ranking of agencies with 20 or more closures by rejection:

Agency	Average Number of Days to Closure by Rejection
National Aeronautics & Space Admin.	N/A
Education	N/A
Small Business Administration	54
Tennessee Valley Authority	64
Health and Human Services	66
Postal Service	76
Labor	82
Defense (Total)	87
General Services Administration	93
Office of Personnel Management	104
Housing and Urban Development	105
Equal Employment Opportunity Comm.	161
Energy	162
Interior	164
Commerce	186
Veterans Administration	188
Transportation	204
Treasury	282
Justice	303
Agriculture	341
Environmental Protection Agency	389

2. CONCLUSIONS/RECOMMENDATIONS

From FY-81 through FY-83, the government-wide average number of days to closure by rejection has decreased from 134 to 88. This trend is positive but must continue, since the decision to reject or not to reject is a relatively straightforward one and should not take almost three months.

B. Cancellation:

Complaints are cancelled when the complainant fails to prosecute the claim.

The following charts show the average number of days to closure by cancellation in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	350	253
FY-82	367	337
FY-83	288	435

Agencies with 20 or more closures

	Mean	Median
FY-81	350	184
FY-82	367	337
FY-83	286	476

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Of agencies with 20 or more closures, six agencies required considerably longer periods of time than most: the Environmental Protection Agency (1214 days); the Department of the Interior (1083 days); the Department of Justice (684 days); the National Aeronautics and Space Administration (668 days); the Department of Labor (661 days); the Department of the Treasury (634 days); and the Veterans Administration (582 days). The following chart ranks agencies by percent of closures that are cancellations:

Agency	Average Number of Days to Closure by Cancellations
Office of Personnel Management	130
Small Business Administration	151
Postal Service	188
Equal Employment Opportunity Comm.	261
Defense (Total)	309
Tennessee Valley Authority	365
Health and Human Services	371
Agriculture	435
Transportation	440
Energy	463
Housing and Urban Development	476
General Services Administration	512
Education	538
Commerce	560
Veterans Administration	582
Treasury	634
Labor	661
National Aeronautics & Space Admin.	668
Justice	684
Interior	1083
Environmental Protection Agency	1214

C. Withdrawal:

A complaint may be closed by withdrawal by the complainant at any time after the complaint has been filed. Agencies have been advised to report withdrawals with corrective actions as settlements.

1. ANALYSIS

The following charts show the average number of days to closure by withdrawal in FY-81, FY-82 and FY-83:

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GOVERNMENT-WIDE

	Mean	Median
FY-81	308	306
FY-82	308	324
FY-83	206	280

Agencies with 20 or more closures

	Mean	Median
FY-81	308	341
FY-82	308	317
FY-83	206	311

Of agencies with 20 or more 20 closures, three agencies required considerably longer periods of time than most: the Department of Commerce (756 days); the Environmental Protection Agency (714 days); and the Veterans Administration (538 days). The following chart illustrates a ranking of agencies with 20 or more closures by this type of closure:

Agency	Average Number of Days to Closure by Withdrawal
Interior	N/A
Small Business Admin.	N/A
Postal Service	163
Labor	171
Defense (Total)	203
Tennessee Valley Authority	208
National Aeronautics & Space Admin.	211
Equal Employment Opportunity Comm.	225
Office of Personnel Management	249
Health and Human Services	256
Justice	280
Housing and Urban Development	311
General Services Administration	354
Education	397
Treasury	436
Agriculture	443
Energy	503
Transportation	523
Environmental Protection Agency	714
Veterans Administration	743
Commerce	756

2. CONCLUSIONS/RECOMMENDATIONS

From FY-81 through FY-83, the government-wide average number of days to closure by withdrawal has decreased from 308 to 206. This is a positive trend that must be continued. Since withdrawal is most likely to occur because the complainant finds the case is taking too long, improved case management and and a more efficient system for processing would have a clear impact on the rate and timing of withdrawals by complainants.

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D. Settlement:

A settlement may occur at any time after the complaint has been filed. A settlement is a written agreement signed by the complainant and an agency official.

1. ANALYSIS

The following charts show the average number of days to closure by settlement in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	342	383
FY-82	328	443
FY-83	286	489

Agencies with 20 or more closures.

	Mean	Median
FY-81	318	293
FY-82	326	441
FY-83	279	514

Of the agencies with 20 or more closures, the five agencies with the longest periods of time to closure by settlement were: the Department of Education (1528 days); the Small Business Administration (934 days); the Environmental Protection Agency (796 days); the Department of Transportation (778 days); and the Veterans Administration (743 days). The following chart illustrates a ranking of agencies with 20 or more closures by settlement:

Agency	Average Number of Days to Closure by Settlement
Office of Personnel Management	45
General Services Administration	193
Postal Service	208
Tennessee Valley Authority	337
Energy	353
Equal Employment Opportunity Comm.	358
Labor	374
National Aeronautics & Space Admin.	392
Defense (Total)	396
Health and Human Services	465
Agriculture	514
Treasury	524
Justice	534
Housing and Urban Development	537
Interior	592
Commerce	618
Transportation	667
Veterans Administration	743
Environmental Protection Agency	796
Small Business Administration	951
Education	1528

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2. CONCLUSIONS/RECOMMENDATIONS

From FY-81 through FY-83, the government-wide average number of days to closure by settlement decreased from 342 to 286. This is a positive trend and must continue.

Settlements occurred an average of 9.5 months after the complaints were filed in the federal sector, compared to four months after the complaints were filed in the private sector. The extended period of time in the federal sector may reflect, in part, that many agencies still attempt settlement of formal complaints only after the investigation has been completed. It is that point at which the regulations require that an attempt at informal adjustment of the complaint be made. At so late a stage in processing, when the passage of time and the investigation itself have diminished the conciliatory bent of the parties, the chances of a successful settlement are considerably less than they are shortly after filing. It is, therefore, recommended that agencies require settlement attempts earlier in the complaint process.

E. Agency Decision on the Merits:

An agency decision on the merits is either a finding of discrimination or of no discrimination which is rendered by the agency after the complainant has had an opportunity to review the agency's proposed disposition and, if so requested, has received a hearing and a Recommended Decision by an EEOC Complaints Examiner.

1. ANALYSIS

The following charts show the average number of days to closure by agency decision in FY-81, FY-82 and FY-83:

GOVERNMENT-WIDE

	Mean	Median
FY-81	611	598
FY-82	595	611
FY-83	524	701

Agencies with 20 or more closures.

	Mean	Median
FY-81	606	716
FY-82	595	684
FY-83	519	833

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Of agencies with more than 20 closures, the six agencies requiring the longest period of time to closure by agency decision were: the Department of Education (1,728 days - almost 5 years); the Environmental Protection Agency (1,376 days - over 4 years); the Department of Commerce (1,240 days - over 3 years); the National Aeronautics and Space Administration (1054 days almost 3 years); the Department of Justice (1024 days - almost 3 years); and the Veterans Administration (1000 days almost 3 years). The following chart illustrates a ranking of agencies by average number of days to closure by agency decision:

Agency	Average of Days to Closure By Agency Decisions On the Merits
Postal Service	372
Equal Employment Opportunity Comm.	453
Transportation	467
Tennessee Valley Authority	503
Defense (Total)	552
Office of Personnel Management	583
Energy	603
Health and Human Services	608
Interior	646
General Services Administration	676
Labor	833
Housing and Urban Development	907
Agriculture	914
Justice	932
Small Business Administration	949
Treasury	963
Veterans Administration	1000
National Aeronautics & Space Admin.	1054
Commerce	1241
Environmental Protection Agency	1376
Education	1728

2. CONCLUSIONS/RECOMMENDATIONS

From FY-81 through FY-83, the government-wide average number of days to closure by agency decision decreased from 611 to 524. This is a positive trend and must continue.

However, the complaint processing time to closure by agency decision on the merits varies from 55 days to 3507 days or approximately 10 years. The government-wide mean was 524 days to closure by agency decision. Congress envisioned 180 days as the appropriate time period for the issuance of an agency decision.

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F. Total Closures:

With each of the five types of closures experiencing a decline in the average number of days to process each, the average number of days for all types of closures was 308 days in FY-83, a considerable decrease from FY-82's average of 374 days.

1. ANALYSIS

The four agencies which had a considerably longer period of time to closure were: the Department of Education (1245 days); the Environmental Protection Agency (1017 days); the Department of Commerce (848 days); and the Small Business Administration (813 days). The following chart shows those agencies with 20 or more closures by their average number of days to closure:

Agency	Total Closures	Average Number of Days to Closure
U.S. Postal Service	9994	208
Office of Personnel Management	28	279
Equal Employment Opportunity Comm.	90	367
Defense	2771	391
Tennessee Valley Authority	234	398
General Services Administration	94	452
Justice	181	453
Energy	30	469
Health and Human Services	479	480
Transportation	271	483
Labor	121	505
Interior	168	583
Treasury	291	596
National Aeronautics & Space Admin.	27	634
Housing & Urban Development	85	634
Agriculture	199	636
Veterans Administration	316	665
Small Business Administration	30	813
Commerce	75	848
Enviromental Protection Agency	64	1017
Education	31	1245

1. CONCLUSIONS/RECOMMENDATIONS

The decrease in the average number of days for all types of closures from the previous year is, certainly, a positive trend. However, more effort must be made further to decrease those processing times.

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SECTION V

AGENCY ACTIONS ON RECOMMENDED DECISIONS OF COMMISSION COMPLAINTS EXAMINERS

A complainant has the right to an agency decision with or without a hearing. When a hearing is requested, an EEOC Complaints Examiner attempts settlement and/or conducts the hearing and recommends to the agency a finding of, or no finding of, discrimination.

1. ANALYSIS

The following charts show the actions taken by agencies on the Recommended Decisions of the EEOC Complaints Examiners government-wide in FY-81, FY-82 and FY-83:

When the EEOC Complaints Examiner Recommends a Finding of Discrimination, Agencies:

		Accept	Modify	Reject
FY-81	No.	174	33	217
	%	41.0%	8.0%	51.0%
FY-82	No.	166	30	167
	%	46.0%	8.0%	46.0%
FY-83	No.	181	39	143
	%	49.9%	10.7%	39.4%

When the EEOC Complaints Examiner Recommends a Finding of No Discrimination, Agencies:

		Accept	Modify	Reject
FY-81	No.	731	15	6
	%	97.0%	2.0%	1.0%
FY-82	No.	829	41	49
	%	90.0%	4.0%	5.0%
FY-83	No.	1052	91	5
	%	91.6%	7.9%	0.4%

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Table V provides the above data by agency for FY-83. Of the 363 EEOC Recommended Decisions finding discrimination, the agencies accepted 181, or 49.9%. Of the 1,148 Recommended Decisions finding no discrimination, the agencies accepted 1041 or 90.7%.

The following chart shows the nine agencies that reported taking action on 20 or more Recommended Decisions received from the Commission:

Agency	% of Findings of Discrimination Accepted	% of Findings of No Discrimination Accepted
Treasury	0	28*
Veterans Administration	0	44*
Postal Service	50	94*
Defense (Total)	50	95
Health and Human Services	56	100
Housing and Urban Development	60	100
Justice	67	100
Transportation	68	100
Tennessee Valley Authority	100	100

* All other actions by the agency on Recommended Decisions finding no discrimination were modifications (none was a rejection).

2. CONCLUSIONS/RECOMMENDATIONS

Between FY-81 and FY-83, when the EEOC Complaints Examiners recommended findings of discrimination, agencies accepted them an average of 46% of the time, modified them an average of 9% of the time, and rejected them 46% of the time.

During the same period, when the EEOC Complaints Examiners recommended findings of no discrimination, agencies accepted them 93% of the time, modified them 5% of the time, and rejected them 2% of the time.

It is reasonable to expect some differences between the rate at which an agency accepts Recommended Decisions finding discrimination and the rate at which an agency accepts Recommended Decisions finding no discrimination. However, the disparity for the first eight agencies listed above is considerable. These agencies should examine relevant decisions to determine why such differences exist between the EEOC Complaints Examiners' recommendations and the agencies' actions.

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TABLE I COMPLAINTS INVENTORY SUMMARY FOR FY-83

AGENCY OR DEPARTMENT	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION	
					NUMBER	%
Action	5	6	2	9	4	80.0
Administrative Office of the U.S. Courts	4	6	4	6	2	50.0
Agency for International Development	31*	8	16	23	(8)	(25.8)
Agriculture	402	192	199	395	(7)	(1.7)
Arms Control & Disarmament Agency	1	0	0	1	0	0.0
Central Intelligence Agency	11	1	4	8	(3)	(27.3)
Civil Aeronautics Board	2	0	1	1	(1)	(50.0)
Commerce	161	62	75	148	(13)	(8.1)
Commission on Civil Rights	15	3	8	10	(5)	(33.3)
Commodity Futures Trading Commission	7	3	5	5	(2)	(28.6)
Consumer Product Safety Commission	3	3	0	6	3	100.0
DEFENSE	3545*	2815	2771	3589	44	1.2
Air Force	917	687	741	863	(54)	(5.9)
Army	956	709	636	1029	73	7.6
Defense Logistics Agency	143	185	122	206	63	44.1
Navy	1329*	1047	1079	1297	(32)	(2.4)
Other Defense	200*	187	193	194	(6)	(3.0)

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TABLE I COMPLAINTS INVENTORY SUMMARY FOR FY-83

AGENCY OR DEPARTMENT	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION	
					NUMBER	%
Education	109	18	31	96	(13)	(11.9)
Energy	47	25	30	42	(5)	(10.6)
Environmental Protection Agency	148	54	64	138	(10)	(6.8)
Equal Employment Opportunity Commission	213	105	90	228	15	7.0
Export/Import Bank	8*	4	2	10	2	25.0
Farm Credit Administration	0	1	0	1	1	0.0
Federal Communications Commission	10*	0	4	6	(4)	(40.0)
Federal Deposit Insurance Corporation	12	5	9	8	(4)	(33.3)
Federal Emergency Management Agency	5	6	8	3	(2)	(40.0)
Federal Home Loan Bank Board	7*	5	4	8	1	14.3
Federal Labor Relations Authority	1	2	3	0	(1)	(100.0)
Federal Maritime Commission	2	2	2	2	0	0.0
Federal Mediation and Conciliation Service	1	0	1	0	(1)	(100.0)
Federal Reserve Board	3	3	1	5	2	66.7
Federal Trade Commission	4	11	10	5	1	25.0
General Services Administration	82*	102	94	90	8	9.8
Government Printing Office	17	17	18	16	(1)	(5.9)

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TABLE I COMPLAINTS INVENTORY SUMMARY FOR FY-83

AGENCY OR DEPARTMENT	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION	
					NUMBER	%
Health & Human Services	621	512	479	654	33	5.3
Housing & Urban Development	133	103	85	151	18	13.5
Interior	563	160	168	555	(8)	(1.4)
International Trade Commission	5	0	2	3	(2)	(40.0)
Interstate Commerce Commission	13*	10	7	16	3	23.1
Justice	593	204	181	616	23	3.9
Labor	155	114	121	148	(7)	(4.5)
Merit Systems Protection Board	8	7	10	5	(3)	(37.5)
National Aeronautics and Space Administration	35*	20	27	28	(7)	(20.0)
National Credit Union Administration	0	1	0	1	1	0.0
National Endowment for the Arts	4*	1	1	4	0	0.0
National Endowment for the Humanities	0	3	1	2	2	0.0
National Labor Relations Board	11*	20	10	21	10	90.9
National Science Foundation	5*	2	3	4	(1)	(20.0)
Nuclear Regulatory Commission	8	4	5	7	(1)	(12.5)
Office of Personnel Management	35	22	28	29	(6)	(17.1)

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TABLE I COMPLAINTS INVENTORY SUMMARY FOR FY-83

AGENCY OR DEPARTMENT	COMPLAINTS ON HAND AT BEGINNING OF REPORTING PERIOD	(+) COMPLAINTS FILED DURING THE REPORTING PERIOD	(-) COMPLAINTS CLOSED DURING THE REPORTING PERIOD	(=) COMPLAINTS ON HAND AT END OF REPORTING PERIOD	RATE OF INVENTORY GROWTH OR REDUCTION	
					NUMBER	%
Panama Canal Commission	14	13	13	14	0	0.0
Pension Benefit Guaranty Corp	9	3	3	9	0	0.0
Railroad Retirement Board	5	3	6	2	(3)	(60.0)
Securities & Exchange Commission	9	9	1	17	8	88.9
Selective Service System	0	2	1	1	1	0.0
Small Business Administration	62*	26	30	58	(4)	(6.5)
Smithsonian Institution	19	10	11	18	(1)	(5.3)
Soldiers' & Airmen's Home	1	3	0	4	3	300.0
State	47	14	11	50	3	6.4
Tennessee Valley Authority	301*	161	234	228	(73)	(24.3)
Transportation	334	233	271	296	(38)	(11.4)
Treasury	742	442	291	893	151	20.4
U. S. Information Agency	6*	4	4	6	0	0.0
United States Postal Service	5275	10605	9994	5886	611	11.6
Veterans Administration	1390	600	316	1674	284	20.4
TOTAL	15,259	16,770	15,770	16,259	1000	6.5

* Reported a figure for the beginning of this period that did not equal the figure reported at the end of previous period.
Parentheses indicate a reduction rate.

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TABLE II COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS FOR FY 83

	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	NUMBER OF COUNSELED PER 1000 POSITIONS	NUMBER OF COMPLAINTS FILED PER 1000 POSITIONS
Action	516	31	6	19.4	60.0	11.6
Administrative Office of the U.S. Courts	508	37	6	16.2	73.0	12.0
Agency for International Development	3753	118	8	6.8	31.0	02.1
Agriculture	120,000	735	192	26.1	06.1	01.6
Arms Control & Disarmament Agency	178	1	0	0.0	05.6	0.00
Central Intelligence Agency	CLASSIFIED	23	1	4.3	0.00	0.00
Civil Aeronautics Board	442	2	0	0.0	04.5	0.00
Commerce	32,817	353	62	17.6	11.0	01.9
Commission on Civil Rights	217	6	3	50.0	28.0	14.0
Commodity Futures Trading Commission	477	4	3	75.0	08.4	06.3
Consumer Product Safety Commission	537	3	3	100.0	05.6	05.6
DEFENSE	1,175,096	14,185	2815	19.8	12.1	02.4
Air Force	281,981	4476	687	15.3	15.9	02.4
[illegible]	369,000	1220	709	58.1	03.3	01.9
Defense Logistics Agency	47,718	1403	185	13.2	29.4	03.9
Navy	342,518	6140	1047	17.1	17.9	03.1
Other Defense	133,879	946	187	19.8	07.1	01.4

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TABLE II COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS FOR FY 83

	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	NUMBER OF COUNSELED PER 1000 POSITIONS	NUMBER OF COMPLAINTS FILED PER 1000 POSITIONS
Education	5,497	51	18	35.3	09.3	03.3
Energy	15,266	46	25	54.3	03.0	01.6
Environmental Protection Agency	9395	311	54	17.4	33.1	05.7
Equal Employment Opportunity Commission	3055	128	105	82.0	41.9	34.4
Export/Import Bank	338	6	4	66.7	17.8	11.8
Farm Credit Administration	307	4	1	25.0	13.0	03.3
Federal Communications Commission	1914	17	0	0.0	08.9	0.00
Federal Deposit Insurance Corporation	3641	24	5	20.8	06.6	01.4
Federal Emergency Management Agency	2500	16	6	37.5	06.4	02.4
Federal Home Loan Bank Board	1501	13	5	38.5	08.6	03.3
Federal Labor Relations Authority	298	19	2	10.5	63.8	06.7
Federal Maritime Commission	290	25	2	8.0	86.2	06.9
Federal Mediation and Conciliation Service	349	0	0	0.0	0.00	0.00
Federal Reserve Board	1511	10	3	30.0	06.6	02.0
Federal Trade Commission	1321	39	11	28.2	29.5	08.3
General Services Administration	26,552	841	102	12.1	31.7	03.8

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TABLE II COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS FOR FY 83

	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	NUMBER OF COUNSELED PER 1000 POSITIONS	NUMBER OF COMPLAINTS FILED PER 1000 POSITIONS
Government Printing Office	5,815	60	17	28.3	10.3	02.9
Health & Human Services	156,644	1121	512	45.7	07.2	03.3
Housing & Urban Development	12,672	266	103	38.7	21.0	08.1
Interior	82,070	1213	160	13.2	14.8	01.9
International Trade Commission	403	24	0	0.0	60.0	0.00
Interstate Commerce Commission	1246	33	10	30.3	26.5	08.0
Justice	56,828	691	204	29.5	12.2	03.6
Labor	19,338	275	114	41.5	14.2	05.9
Merit Systems Protection Board	443	23	7	30.4	52.0	16.0
National Aeronautics and Space Administration	21,924	40	20	50.0	01.8	0.9
National Credit Union Administration	621	3	1	33.3	04.8	01.6
National Endowment for the Arts	314	44	1	2.3	140.0	03.2
National Endowment for the Humanities	244	19	3	15.8	78.0	12.3
National Labor Relations Board	2596	109	20	18.3	42.0	07.7
National Science Foundation	1220	8	2	25.0	07.0	01.6
Nuclear Regulatory Commission	3242	14	4	28.6	04.0	01.0
Office of Personnel Management	4948	147	22	15.0	29.7	04.4

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TABLE II COUNSELING AND COMPLAINT FILING BY AGENCY AND NUMBER OF FULL TIME POSITIONS FOR FY 83

	TOTAL NUMBER FULL TIME PERMANENT POSITIONS	TOTAL NUMBER PERSONS COUNSELED THIS PERIOD	TOTAL NUMBER COMPLAINTS FILED THIS PERIOD	PERCENTAGE OF COUNSELING CONTACTS RESULTING IN FORMAL COMPLAINTS	NUMBER OF COUNSELED PER 1000 POSITIONS	NUMBER OF COMPLAINTS FILED PER 1000 POSITIONS
Panama Canal Commission	8297	39	13	33.3	04.7	01.6
Pension Benefit Guaranty Corp	435	28	3	10.7	64.0	06.9
Railroad Retirement Board	1545	22	3	13.6	14.2	01.9
Securities & Exchange Commission	1879	126	9	7.1	67.0	04.7
Selective Service System	324	3	2	66.7	09.3	06.2
Small Business Administration	3870	138	26	18.8	36.0	06.7
Smithsonian Institution	3376	40	10	25.0	11.8	03.0
Soldiers' & Airmen's Home	990	3	3	100.0	03.0	03.0
State	13,808	75	14	18.7	05.4	01.0
Tennessee Valley Authority	37,010	1303	161	12.4	35.0	04.4
Transportation	61,460	697	233	33.4	11.3	03.8
Treasury	100,361	1730	442	25.5	17.2	04.4
U. S. Information Agency	4464	11	4	36.4	02.5	0.9
United States Postal Service	634,401	45,886	10605	23.1	70.0	16.2
Veterans Administration	208,490	2880	600	20.8	13.8	02.9
TOTAL	2,879,554	74,119	16,770	22.6	25.7	05.8

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TABLE III AGENCY CLOSURE RATES BY TYPE OF CLOSURE FOR FY-83

AGENCY	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES				
				REJECTIONS	CANCELLATIONS	WITHDRAWALS	SETTLEMENTS	AGENCY DECISIONS
				NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES
ACTION	6	2	33.3	0 0.0	0 0.0	1 50.0	0 0.0	1 50.0
ADMINISTRATIVE OFFICE OF THE U.S. COURTS	6	4	66.7	2 50.0	0 0.0	1 25.0	0 0.0	1 25.0
AGENCY FOR INTERNATIONAL DEVELOPMENT	8	16	200.0	2 12.5	0 0.0	1 6.3	8 50.0	5 31.3
AGRICULTURE	192	199	103.6	12 6.0	4 2.0	7 3.5	108 54.3	68 34.2
ARMS CONTROL & DISARMAMENT AGENCY	0	0	0.0	0 0.0	0 0.0	0 0.0	0 0.0	0 0.0
CENTRAL INTELLIGENCE AGENCY	1	4	400.0	0 0.0	0 0.0	0 0.0	1 25.0	3 75.0
CIVIL AERONAUTICS BOARD	0	1	0.0	0 0.0	0 0.0	0 0.0	0 0.0	1 100.0
COMMERCE	62	75	121.0	6 8.0	11 14.7	4 5.3	22 29.3	32 42.7
COMMISSION ON CIVIL RIGHTS	3	8	267.0	0 0.0	0 0.0	0 0.0	1 12.5	7 87.5
COMMODITY FUTURES TRADING COMMISSION	3	5	167.0	0 0.0	0 0.0	0 0.0	0 0.0	5 100.0
CONSUMER PRODUCT SAFETY COMMISSION	3	0	0.0	0 0.0	0 0.0	0 0.0	0 0.0	0 0.0

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TABLE III AGENCY CLOSURE RATES BY TYPE OF CLOSURE FOR FY-83

AGENCY	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES				
				REJECTIONS	CANCELLATIONS	WITHDRAWALS	SETTLEMENTS	AGENCY DECISIONS
				NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES
DEFENSE	2815	2771	98.4	319 11.5	173 6.2	492 17.8	542 19.6	1245 44.9
AIR FORCE	687	741	107.9	83 11.2	38 5.1	127 17.1	89 12.0	404 54.5
ARMY	709	636	89.7	68 10.7	41 6.4	59 9.3	127 20.0	341 53.6
DEFENSE LOGISTICS AGENCY	185	122	65.9	11 9.0	7 5.7	31 25.4	16 13.1	57 46.7
NAVY	1047	1079	103.1	110 10.2	70 6.5	247 22.9	266 24.7	386 35.8
OTHER DEFENSE	187	193	103.2	47 24.4	17 8.9	28 14.5	44 22.8	57 29.5
EDUCATION	18	31	172.2	0 0.0	1 3.2	9 29.0	9 29.0	12 38.7
ENERGY	25	30	120.0	5 16.7	3 13.3	4 13.3	4 10.0	14 46.7
ENVIRONMENTAL PROTECTION AGENCY	54	64	119.0	7 10.9	6 9.4	14 21.9	10 15.6	27 42.2
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	105	90	85.7	6 6.7	11 12.2	10 11.1	17 18.9	46 51.1
EXPORT/IMPORT BANK	4	2	50.0	0.0	0.0	0.0	1 50.0	1 50.0
FARM CREDIT ADMINISTRATION	1	0	0.0	0.0	0.0	0.0	0.0	0.0

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TABLE III AGENCY CLOSURE RATES BY TYPE OF CLOSURE FOR FY-83

AGENCY	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES				
				REJECTIONS	CANCELLATIONS	WITHDRAWALS	SETTLEMENTS	AGENCY DECISIONS
				NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES
FEDERAL COMMUNICATIONS COMMISSION	0	4	0.0	0.0	3 25.0	0.0	0 50.0	1 25.0
FEDERAL DEPOSIT INSURANCE CORPORATION	5	9	180.0	1 11.1	2 22.2	0.0	0.0	6 66.7
FEDERAL EMERGENCY MANAGEMENT AGENCY	6	8	133.3	2 25.0	0.0	0.0	5 62.5	1 12.5
FEDERAL HOME LOAN BANK BOARD	5	4	80.0	0.0	0.0	0.0	2 50.0	2 50.0
FEDERAL LABOR RELATIONS AUTHORITY	2	3	150.0	0.0	1 33.3	1 33.3	1 66.7	0.0
FEDERAL MARITIME COMMISSION	2	2	100.0	0.0	2 100.0	0.0	0.0	0.0
FEDERAL MEDIATION & CONCILIATION SERVICE	0	1	0.0	0.0	0.0	0.0	0.0	1 100.0
FEDERAL RESERVE BOARD	3	1	33.3	0.0	1 100.0	0.0	0.0	0.0
FEDERAL TRADE COMMISSION	11	10	90.9	1 10.0	4 40.0	0.0	3 30.0	2 20.0
GENERAL SERVICES ADMINISTRATION	102	94	92.2	17 18.1	10 10.6	12 12.8	36 38.3	19 20.2
GOVERNMENT PRINTING OFFICE	17	18	105.9	2 11.1	0.0	4 22.2	5 27.8	7 38.9
HEALTH AND HUMAN SERVICES	512	479	93.6	48 10.0	10 2.1	62 12.9	79 16.5	280 58.5

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TABLE III AGENCY CLOSURE RATES BY TYPE OF CLOSURE FOR FY-83

AGENCY	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES				
				REJECTIONS	CANCELLATIONS	WITHDRAWALS	SETTLEMENTS	AGENCY DECISIONS
				NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES
HOUSING & URBAN DEVELOPMENT	103	85	82.5	11 12.9	8 9.4	9 10.6	15 17.6	42 49.4
INTERIOR	160	168	105.0	8 4.8	1 0.6	0.0	132 78.6	27 16.1
INTERNATIONAL TRADE COMMISSION	0	2	0.0	0.0	0	1 50.0	0.0	1 50.0
INTERSTATE COMMERCE COMMISSION	10	7	70.0	2 28.6	1 14.3	0.0	3 42.9	1 14.3
JUSTICE	204	181	88.7	13 7.2	19 10.5	26 14.4	61 33.7	62 34.3
LABOR	114	121	106.1	14 11.6	17 14.0	5 4.1	50 41.3	35 28.9
MERIT SYSTEMS PROTECTION BOARD	7	10	142.9	2 20.0	2 20.0	1 10.0	3 30.0	2 20.0
NATL AERONAUTICS & SPACE ADMINISTRATION	20	27	135.0	0.0	1 3.7	2 7.4	14 51.9	10 37.0
NATIONAL CREDIT UNION ADMINSTRATION	1	0	0.0	0.0	0.0	0.0	0.0	0.0
NATIONAL ENDOWMENT FOR THE ARTS	1	1	100.0	0.0	0.0	0.0	1 100.0	0.0
NATIONAL ENDOWMENT FOR THE HUMANITIES	3	1	33.3	0.0	0.0	0.0	1 100.0	0.0
NATIONAL LABOR RELATIONS BOARD	20	10	50.0	3 30.0	0.0	3 30.0	0.0	4 40.0

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TABLE III AGENCY CLOSURE RATES BY TYPE OF CLOSURE FOR FY-83

AGENCY	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES				
				REJECTIONS	CANCELLATIONS	WITHDRAWALS	SETTLEMENTS	AGENCY DECISIONS
				NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES
NATIONAL SCIENCE FOUNDATION	2	3	150.0	0 0.0	0 0.0	1 33.3	1 33.3	1 33.3
NUCLEAR REGULATORY COMMISSION	4	5	125.0	0 0.0	0 0.0	1 20.0	3 60.0	1 20.0
OFFICE OF PERSONNEL MANAGEMENT	22	28	127.3	15 53.6	1 3.6	1 3.6	1 3.6	10 35.7
PANAMA CANAL COMMISSION	13	13	100.0	3 23.1	0 0.0	2 15.4	5 38.5	3 23.1
PENSION BENEFIT GUARANTY CORPORATION	3	3	100.0	0 0.0	0 0.0	0 0.0	1 33.3	2 66.7
RAILROAD RETIREMENT BOARD	3	6	200.0	2 33.3	0 0.0	2 33.3	0 0.0	2 33.3
SECURITIES & EXCHANGE COMMISSION	9	1	11.1	0 0.0	0 0.0	0 0.0	1 100.0	0 0.0
SELECTIVE SERVICE SYSTEM	2	1	50.0	1 100.0	0 0.0	0 0.0	0 0.0	0 0.0
SMALL BUSINESS ADMINISTRATION	26	30	115.4	1 3.3	4 13.3	0 0.0	8 26.7	17 56.7
SMITHSONIAN INSTITUTION	10	11	110.0	0 0.0	4 36.4	0 0.0	4 36.4	3 27.3
SOLDIER'S & AIRMEN'S HOME	3	0	0.0	0 0.0	0 0.0	0 0.0	0 0.0	0 0.0

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TABLE III AGENCY CLOSURE RATES BY TYPE OF CLOSURE FOR FY-83

AGENCY	TOTAL COMPLAINTS FILED THIS PERIOD	TOTAL COMPLAINTS CLOSED THIS PERIOD	TOTAL COMPLAINTS CLOSED AS % OF TOTAL COMPLAINTS FILED	COMPLAINT CLOSURE TYPES				
				REJECTIONS	CANCELLATIONS	WITHDRAWALS	SETTLEMENTS	AGENCY DECISIONS
				NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES	NUMBER % OF TOTAL CLOSURES
STATE	14	11	78.6	3 27.3	2 18.2	1 9.1	0.0	5 45.5
TENNESSEE VALLEY AUTHORITY	161	234	145.3	26 11.1	9 3.8	11 4.7	52 22.2	136 58.1
TRANSPORTATION	233	271	116.3	24 8.9	30 11.1	46 17.0	56 20.7	115 42.4
TREASURY	442	291	65.8	34 11.7	20 6.9	94 32.3	63 21.6	80 27.5
UNITED STATES INFORMATION AGENCY	4	4	100.0	2 50.0	0.0	1 25.0	0.0	1 25.0
UNITED STATES POSTAL SERVICE	10605	9994	94.2	1782 17.8	573 5.7	2027 20.3	3579 35.8	2033 20.3
VETERANS ADMINISTRATION	600	316	52.7	46 14.6	38 12.0	93 29.4	37 11.7	102 32.3
TOTAL	16,770	15,770	94.1	2,422 15.4	972 6.2	2949 18.7	4945 31.4	4482 28.4

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TABLE IV AVERAGE NUMBER OF DAYS TO CLOSURE BY TYPE OF CLOSURE FOR FY-83

AGENCY OR DEPARTMENT	REJECTION		CANCELLATION		WITHDRAWAL		SETTLEMENT		AGENCY DECISION		TOTAL AGENCY	
	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS
Action	0	0	0	0	1	558	0	0	1	578	2	568
Administrative Office of the U.S. Courts	2	35	0	0	1	266	0	0	1	1388	4	431
Agency for International Development	2	50	0	0	1	291	8	1137	5	1511	16	1065
Agriculture	12	341	4	435	7	443	108	514	68	914	199	636
Arms Control & Disarmament Agency	0	0	0	0	0	0	0	0	0	0	0	0
Central Intelligence Agency	0	0	0	0	0	0	1	1775	3	653	4	934
Civil Aeronautics Board	0	0	0	0	0	0	0	0	1	701	1	701
Commerce	6	186	11	560	4	756	22	618	32	1241	75	848
Commission on Civil Rights	0	0	0	0	0	0	1	578	7	842	8	809
Commodity Futures Trading Commission	0	0	0	0	0	0	0	0	5	1050	5	1050
Consumer Product Safety Commission	0	0	0	0	0	0	0	0	0	0	0	0
DEFENSE	319	87	173	309	492	203	542	396	1245	552	2771	391
Air Force	83	63	38	273	127	152	89	299	404	616	741	419
Army	68	51	41	326	59	245	127	267	341	619	636	434
Defense Logistics Agency	11	36	7	53	31	240	16	94	57	369	122	252
Navy	110	64	70	322	247	212	266	501	386	474	1079	369
Other Defense	47	242	17	404	28	225	44	428	57	411	193	346

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TABLE IV AVERAGE NUMBER OF DAYS TO CLOSURE BY TYPE OF CLOSURE FOR FY-83

AGENCY OR DEPARTMENT	REJECTION		CANCELLATION		WITHDRAWAL		SETTLEMENT		AGENCY DECISION		TOTAL AGENCY	
	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS
Education	0	0	1	538	9	397	9	1528	12	1728	31	1245
Energy	5	162	3	463	4	503	4	353	14	603	30	469
Environmental Protection Agency	7	389	6	1214	14	714	10	796	27	1376	64	1017
Equal Employment Opportunity Commission	6	161	11	261	10	225	17	358	46	453	90	367
Export/Import Bank	0	0	0	0	0	0	1	232	1	55	2	144
Farm Credit Administration	0	0	0	0	0	0	0	0	0	0	0	0
Federal Communications Commission	0	0	3	1000	0	0	0	0	1	3507	4	1627
Federal Deposit Insurance Corporation	1	30	2	174	0	0	0	0	6	850	9	609
Federal Emergency Management Agency	2	43	0	0	0	0	5	163	1	205	8	138
Federal Home Loan Bank Board	0	0	0	0	0	0	2	481	2	999	4	740
Federal Labor Relations Authority	0	0	1	137	1	123	1	197	0	0	3	149
Federal Maritime Commission	0	0	2	194	0	0	0	0	0	0	2	194
Federal Mediation and Conciliation Service	0	0	0	0	0	0	0	0	1	270	1	270
Federal Reserve System	0	0	1	118	0	0	0	0	0	0	1	118
Federal Trade Commission	1	9	4	32	0	0	3	322	2	405	10	191
General Services Administration	17	93	10	512	12	354	36	520	19	676	94	452
Government Printing Office	2	27	0	0	4	208	5	537	7	547	18	411

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TABLE IV AVERAGE NUMBER OF DAYS TO CLOSURE BY TYPE OF CLOSURE FOR FY-83

AGENCY OR DEPARTMENT	REJECTION		CANCELLATION		WITHDRAWAL		SETTLEMENT		AGENCY DECISION		TOTAL AGENCY	
	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS
Health & Human Services	48	66	10	371	62	256	79	465	280	608	479	480
Housing & Urban Development	11	105	9	476	9	311	15	537	42	907	85	634
Interior	8	164	1	1083	0	0	132	592	27	646	168	583
International Trade Commission	0	0	0	0	1	420	0	0	1	180	2	300
Interstate Commerce Commission	2	44	1	254	0	0	3	196	1	363	7	185
Justice	13	303	19	684	26	280	61	534	62	932	181	633
Labor	14	92	17	661	5	171	50	374	35	833	121	505
Merit Systems Protection Board	2	21	2	64	1	402	3	451	2	1111	10	415
National Aeronautics and Space Administration	0	0	1	668	2	211	14	392	10	1054	27	634
National Credit Union Administration	0	0	0	0	0	0	0	0	0	0	0	0
National Endowment for the Arts	0	0	0	0	0	0	1	1096	0	0	1	1096
National Endowment for the Humanities	0	0	0	0	0	0	1	22	0	0	1	22
National Labor Relations Board	3	477	0	0	3	44	0	0	4	946	10	535
National Science Foundation	0	0	0	0	1	79	1	151	1	808	3	346
Nuclear Regulatory Commission	0	0	0	0	1	63	3	1769	1	213	5	1107
Office of Personnel Management	15	104	1	130	1	249	1	45	10	583	28	274
Panama Canal Commission	3	101	0	0	2	119	5	704	3	958	13	510

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TABLE IV AVERAGE NUMBER OF DAYS TO CLOSURE BY TYPE OF CLOSURE FOR FY-83

AGENCY OR DEPARTMENT	REJECTION		CANCELLATION		WITHDRAWAL		SETTLEMENT		AGENCY DECISION		TOTAL AGENCY	
	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS	#	AVG. DAYS
Pension Benefit Guaranty Corp	0	0	0	0	0	0	1	1095	2	1047	3	1063
Railroad Retirement Board	2	43	0	0	2	30	0	0	2	497	6	190
Securities & Exchange Commission	0	0	0	0	0	0	1	953	0	0	1	953
Selective Service System	1	16	0	0	0	0	0	0	0	0	1	16
Small Business Administration	1	54	4	151	0	0	8	951	17	949	30	813
Smithsonian Institution	0	0	4	684	0	0	4	720	3	862	11	746
Soldiers' & Airmen's Home	0	0	0	0	0	0	0	0	0	0	0	0
State	3	270	2	300	1	90	0	0	5	616	11	416
Tennessee Valley Authority	26	64	9	365	11	208	52	337	136	503	234	398
Transportation	24	104	30	440	46	523	56	667	115	467	271	483
Treasury	34	282	20	634	94	436	63	524	80	963	291	596
U. S. Information Agency	2	10	0	0	1	378	0	0	1	659	4	264
United States Postal Service	1782	76	573	188	2027	163	3578	208	2033	372	9994	208
Veterans Administration	46	188	38	582	93	538	37	743	102	1000	316	665
TOTAL	2422	88	972	288	2949	206	4945	286	4482	524	15,770	308

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TABLE V AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC FOR FY-81

Agency or Department	SUMMER RECOMMENDED DECISIONS ACTED ON	FINDING DISCRIMINATION		AGENCY ACTION			FINDING NO DISCRIMINATION		AGENCY ACTION		
				ACCEPT	MODIFY	REJECT			ACCEPT	MODIFY	REJECT
		NUMBER	% OF TOTAL ACTED ON	NUMBER % OF BD/D	NUMBER % OF BD/D	NUMBER % OF BD/D	NUMBER	% OF TOTAL ACTED ON	NUMBER % OF BD/ND	NUMBER % OF BD/ND	NUMBER % OF BD/ND
Action	0	0					0				
Administrative Office of the U.S. Courts	1	0					1	100.0	1 100.0		
Agency for International Development	5	2	40.0	1 50.0		1 50.0	3	60.0	3 100.0		
Agriculture	9	1	11.1			1 100.0	8	88.9	6 75.0	2 25.0	
Arms Control & Disarmament Agency	0	0					0				
Central Intelligence Agency	0	0					0				
Civil Aeronautics Board	1	0					1	100.0	1 100.0		
Commerce	10	3	30.0		1 33.3	2 66.7	7	70.	7 100.0		
Commission on Civil Rights	7	2	28.6	1 50.0	1 50.0		5	71.4	5 100.0		
Commodity Futures Trading Commission	4	0					4	100.0	4 100.0		
Consumer Product Safety Commission	0	0					0				
DEFENSE	515	135	26.2	67 49.6	15 11.1	53 39.3	380	73.8	362 95.3	13 3.4	5 1.3
Air Force	240	43	17.9	9 20.9	9 20.9	25 58.1	197	82.1	193 98.1	1 0.5	3 1.5
Army	133	62	46.6	41 66.1	0 0.0	21 33.9	71	53.4	70 98.6	0 0.0	1 1.4
Defense Logistics Agency	25	7	28.0	5 71.4	0 0.0	2 28.6	18	72.0	18 100.0	0 0.0	0 0.0
Navy	90	18	20.0	9 50.0	5 27.8	4 22.2	72	80.0	59 81.9	12 16.7	1 1.4
Other Defense	27	5	18.5	3 60.0	1 20.0	1 20.0	22	81.5	22 100.0	0 0.0	0 0.0

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TABLE V AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC FOR FY-93

Agency or Department	NUMBER RECOMMENDED DECISIONS ACTED ON	FINDING DISCRIMINATION		AGENCY ACTION			FINDING NO DISCRIMINATION		AGENCY ACTION		
				ACCEPT	MODIFY	REJECT			ACCEPT	MODIFY	REJECT
		NUMBER	% OF TOTAL ACTED ON	NUMBER % OF RD/D	NUMBER % OF RD/D	NUMBER % OF RD/D	NUMBER	% OF TOTAL ACTED ON	NUMBER % OF RD/ND	NUMBER % OF RD/ND	NUMBER % OF RD/ND
Education	8	4	50.0			4 100.0	4	50.0	4 100.0		
Energy	0	0					0				
Environmental Protection Agency	6	2	33.3	1 50.0		1 50.0	4	66.7	4 100.0		
Equal Employment Opportunity Commission	9	2	22.2	1 50.0		1 50.0	7	77.8	7 100.0		
Export/Import Bank	1	0					1	100.0	1 100.0		
Farm Credit Administration	0	0					0				
Federal Communications Commission	0	0					0				
Federal Deposit Insurance Corporation	3	0					3	100.0	3 100.0		
Federal Emergency Management Agency	1	0					1	100.0	1 100.0		
Federal Home Loan Bank Board	1	0					1	100.0	1 100.0		
Federal Labor Relations Authority	0	0					0				
Federal Maritime Commission	0	0					0				
Federal Mediation and Conciliation Service	1	0					1	100.0	1 100.0		
Federal Reserve Board	0	0					0				
Federal Trade Commission	0	0					0				
General Services Administration	7	6	85.7	6 100.0			1	14.3	1 100.0		
Government Printing Office	3	1	33.3			1 100.0	2	66.7	2 100.0		

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TABLE V AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC FOR FY-83

Agency or Department	NUMBER RECOMMENDED DECISIONS ACTED ON	FINDING DISCRIMINATION		AGENCY ACTION			FINDING NO DISCRIMINATION		AGENCY ACTION		
				ACCEPT	MODIFY	REJECT			ACCEPT	MODIFY	REJECT
		NUMBER	% OF TOTAL ACTED ON	NUMBER % OF RD/D	NUMBER % OF RD/D	NUMBER % OF RD/D	NUMBER	% OF TOTAL ACTED ON	NUMBER % OF RD/ND	NUMBER % OF RD/ND	NUMBER % OF RD/ND
Health & Human Services	81	18	22.2	10 55.5		8 44.4	63	77.8	63 100.0		
Housing & Urban Development	23	5	21.7	3 60.0		2 40.0	18	78.3	18 100.0		
Interior	0	0					0				
International Trade Commission	0	0					0				
Interstate Commerce Commission	0	0					0				
Justice	22	21	95.5	14 66.7	7 33.3		1	4.5	1 100.0		
Labor	14	1	7.1	1 100.0			13	92.9	13 100.0		
Merit Systems Protection Board	0	0					0				
National Aeronautics and Space Administration	8	2	25.0		2 100.0		6	75.0	5 83.3	1 16.7	
National Credit Union Administration	0	0					0				
National Endowment for the Arts	0	0					0				
National Endowment for the Humanities	0	0					0				
National Labor Relations Board	0	0					0				
National Science Foundation	0	0					0				
Nuclear Regulatory Commission	3	3	100.0	3 100.0			0				
Office of Personnel Management	4	0					4	100.0	4 100.0		
Panama Canal Commission	2	1	50.0	1 100.0			1	50.0	1 100.0		

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TABLE V AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC FOR FY-83

Agency or Department	NUMBER RECOMMENDED DECISIONS ACTED ON	FINDING DISCRIMINATION		AGENCY ACTION			FINDING NO DISCRIMINATION		AGENCY ACTION		
				ACCEPT	MODIFY	REJECT			ACCEPT	MODIFY	REJECT
		NUMBER	% OF TOTAL ACTED ON	NUMBER % OF RD/D	NUMBER % OF RD/D	NUMBER % OF RD/D	NUMBER	% OF TOTAL ACTED ON	NUMBER % OF RD/ND	NUMBER % OF RD/ND	NUMBER % OF RD/ND
Pension Benefit Guaranty Corp	1	1	100.0			1 100.0	0				
Railroad Retirement Board	2	1	50.0			1 100.0	1	50.0	1 100.0		
Securities & Exchange Commission	0	0					0				
Selective Service System	0	0					0				
Small Business Administration	9	1	11.1	1 100.0			8	88.9	8 100.0		
Smithsonian Institution	3	0					3	100.0	3 100.0		
Soldiers' & Airmen's Home	0	0					0				
State	4						4	100.0	4 100.0		
Tennessee Valley Authority	21	2	9.5	2 100.0			19	90.5	19 100.0		
Transportation	44	25	56.8	17 68.0	7 28.0	1 4.0	19	43.2	19 100.0		
Treasury	44	5	11.4		1 20.0	4 80.0	39	88.6		39 88.6	
U. S. Information Agency	0	0					0				
United States Postal Service	587	104	17.7	52 50.0	5 4.8	47 45.2	483	82.3	454 94.0	29 6.0	
Veterans Administration	47	15	31.8			15 100.0	32	68.1	14 43.8	18 56.3	
TOTAL	1511	363	24.0	181 49.9	39 10.7	143 39.4	1148	76.0	1041 90.7	102 8.9	5 0.4

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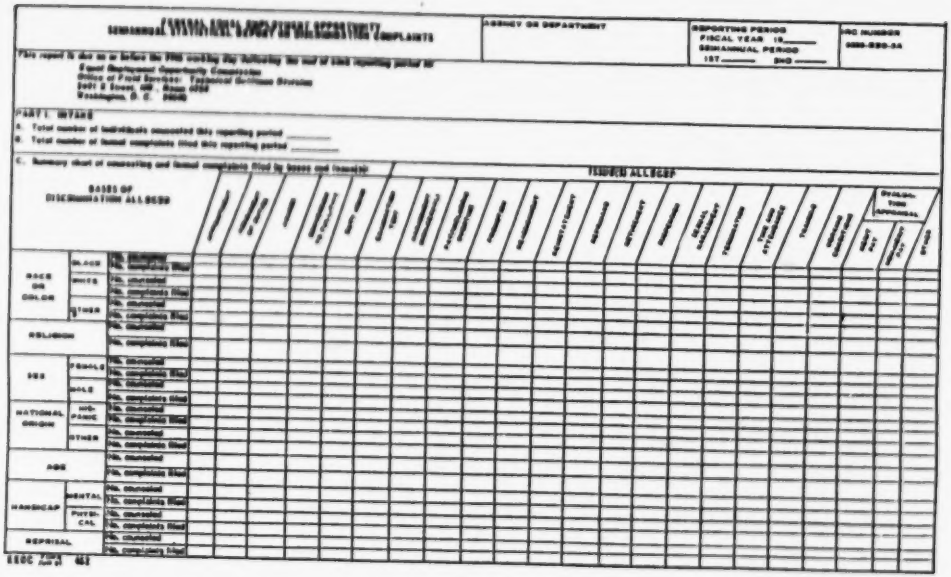

AGENCY OR DEPARTMENT

REPORTING PERIOD
FISCAL YEAR 19____
SEMIANNUAL PERIOD
1ST _____ 2ND _____

SEC NUMBER
0000-000-00

This report is due on or before the 30th working day following the end of each reporting period to:
Equal Employment Opportunity Commission
Office of Field Services: Technical Services Division
2401 E Street, NW - Room 4054
Washington, D. C. 20506

PART I. INTAKE

A. Total number of individuals counseled this reporting period _____

B. Total number of formal complaints filed this reporting period _____

C. Summary chart of counseling and formal complaints filed by bases and issue(s)

BASES OF DISCRIMINATION ALLEGED			ISSUES ALLEGED																								
			Appointment	Assignment of duties	Awards	Conversion to full time	Demotion	Discharge	Disciplinary action	Duty hours	Evaluation	Examination	Harassment	Hiring	Leave	Pay	Promotion	Reasonable accommodation	Reassignment	Retirement	Terms, conditions or privileges of employment	Training	Transfer	Other personnel action	Opinion-tion Appraisal		
RACE OR COLOR	BLACK	No. counseled																									
		No. complaints filed																									
	WHITE	No. counseled																									
		No. complaints filed																									
	OTHER	No. counseled																									
		No. complaints filed																									
RELIGION		No. counseled																									
		No. complaints filed																									
SEX	FEMALE	No. counseled																									
		No. complaints filed																									
	MALE	No. counseled																									
		No. complaints filed																									
NATIONAL ORIGIN	HISPANIC	No. counseled																									
		No. complaints filed																									
	OTHER	No. counseled																									
		No. complaints filed																									
AGE		No. counseled																									
		No. complaints filed																									
HANDICAP	MENTAL	No. counseled																									
		No. complaints filed																									
	PHYSICAL	No. counseled																									
		No. complaints filed																									
REPRISAL		No. counseled																									
		No. complaints filed																									

EEOC Form 462

Attachment 1

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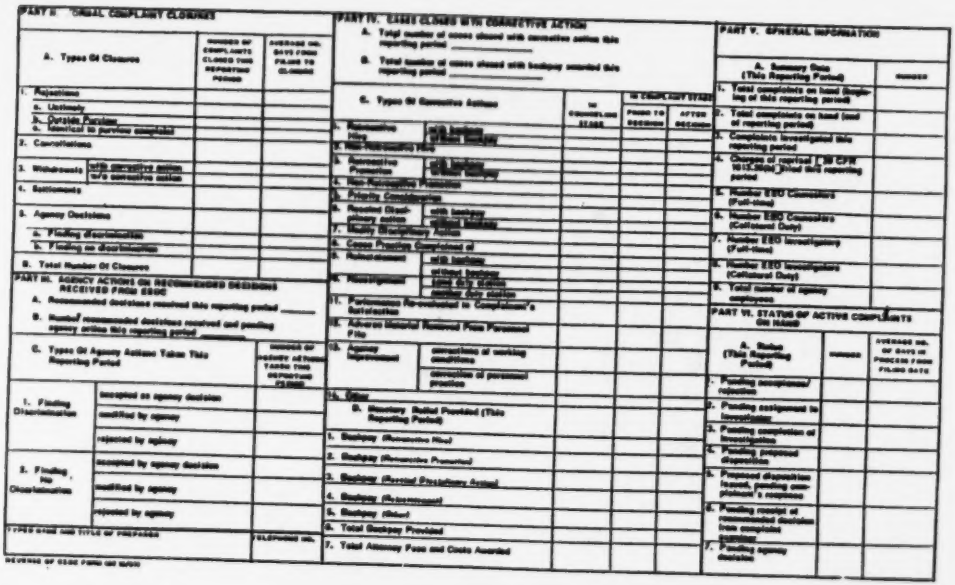

PART II. FINAL COMPLAINT CLOSURES

A. Types Of Closure	NUMBER OF COMPLAINTS CLOSED THIS REPORTING PERIOD	AVERAGE NO. DAYS FROM FILING TO CLOSURE
1. Adjustments		
a. Untimely		
b. Outside Function		
c. Identical to purview complaint		
2. Cancellations		
3. Withdrawals — with corrective action		
3. Withdrawals — w/o corrective action		
4. Settlements		
5. Agency Decisions		
a. Finding discrimination		
b. Finding no discrimination		
6. Total Number Of Closures		

PART III. AGENCY ACTIONS ON RECOMMENDED DECISIONS RECEIVED FROM EEOC

A. Recommended decisions received this reporting period _____

B. Number of recommended decisions received and pending agency action this reporting period _____

C. Types Of Agency Actions Taken This Reporting Period		NUMBER OF DAYS AVERAGE TIME TO TAKE ACTION
1. Finding Discrimination	accepted as agency decision	
	modified by agency	
	rejected by agency	
2. Finding No Discrimination	accepted by agency decision	
	modified by agency	
	rejected by agency	
TYPED NAME AND TITLE OF PREPARER		TELEPHONE NO.

PART IV. CASES CLOSED WITH CORRECTIVE ACTION

A. Total number of cases closed with corrective action this reporting period _____

B. Total number of cases closed with backpay awarded this reporting period _____

C. Types Of Corrective Actions		NO. COMPLAINTS INVOLVED	NO. COMPLAINANT STARTS: PRIOR TO DECISION	NO. COMPLAINANT STARTS: AFTER DECISION
1. Remedial Hire	with backpay			
	without backpay			
2. Non-Monetary Hire				
3. Accelerated Promotion	with backpay			
	without backpay			
4. Non-Monetary Promotion				
5. Priority Considerations				
6. Retroactive Classification	with backpay			
	without backpay			
7. Training Or Apprenticeship Slots				
8. Career Counseling Completions of				
9. Reinstatement	with backpay			
	without backpay			
10. Reassignment	without duty station			
	with duty station			
11. Performance Re-evaluation In Complainant's Behalf				
12. Adverse Material Removed From Personnel File				
13. Agency Improvement	corrections of working conditions			
	correction of personnel practice			
14. Other				
D. Monetary Relief Provided (This Reporting Period)				
1. Backpay (Retroactive Hire)				
2. Backpay (Retroactive Promotion)				
3. Backpay (Forced Presidency Action)				
4. Backpay (Reinstatement)				
5. Backpay (Other)				
6. Total Backpay Provided				
7. Total Attorney Fees and Costs Awarded				

PART V. GENERAL INFORMATION

A. Summary Data (This Reporting Period)	NUMBER
1. Total complaints on hand (beginning of this reporting period)	
2. Total complaints on hand (end of reporting period)	
3. Complaints investigated this reporting period	
4. Charges of reprisal (5 29 CFR 1613.261) filed this reporting period	
5. Number EEO Counselors (Full-time)	
6. Number EEO Counselors (Collateral Duty)	
7. Number EEO Investigators (Full-time)	
8. Number EEO Investigators (Collateral Duty)	
9. Total number of agency employees	

PART VI. STATUS OF ACTIVE COMPLAINTS ON HAND

A. Status (This Reporting Period)	NUMBER	AVERAGE NO. OF DAYS IN PROCESS FROM FILING DATE
1. Pending acceptance/ rejection		
2. Pending assignment to investigator		
3. Pending completion of investigation		
4. Pending proposed disposition		
5. Proposed disposition issued, pending complainant's response		
6. Pending review of recommended decision from complaint examiner		
7. Pending agency decision		

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Mr. MARTINEZ. Thank you, Mr. Bielan.

Mr. Hawkins.

Mr. HAWKINS. Mr. Bielan, I failed to follow you too carefully. I think the issue before this committee is whether or not EEOC is going to uphold the law. I don't think you touched on that at all.

Mr. BIELAN. I think I can state with confidence, Mr. Chairman, that we intend to uphold the law.

Mr. HAWKINS. Well, why aren't you then?

Mr. BIELAN. In the areas of——

Mr. HAWKINS. The agency has consistently been in disagreement with the courts on affirmative action. The Chairman of the EEOC, before this committee, has disagreed with the courts on the question of goals and timetables and on any definition of affirmative action. I can't give you one instance in the last year in which the Chairman of the Commission, or any member of the Commission, has come before this committee and has said, "we support goals and timetables; we support affirmative action; we intend to see that the law is vigorously enforced."

On the issue of systemic discrimination, the Commission has slowed down its pursuit of these types of charges. They have come before this committee time after time and said "we prefer to pursue individual litigation". They have not given us a report on what they intend to do in the area of systemic discrimination. I don't know of one instance in which they have agreed to do anything, which was the intent of Congress in the 1972 amendments.

Mr. BIELAN. On the question of goals and timetables, our management directives, I think, for the 1982 through 1986 cycle, speak for themselves. I have never been told, as head of Public Sector Programs, to back off on goals and timetables. We will continue to report to——

Mr. HAWKINS. But Chairman Thomas is backing off. Do you agree or disagree with Mr. Thomas' position, as was just quoted a few minutes ago to you, in which he changed his position on goals and timetables.

Mr. BIELAN. The Chairman has expressed his personal views on goals and timetables for a number of years. However, the Chairman has never——

Mr. HAWKINS. Are you expressing your personal views or those of the Commission?

Mr. BIELAN. The Commission's position. The Commission's view is that goals and timetables for the fiscal year 1982 through fiscal year 1986 cycle shall be enforceable. The Chairman has never told me not to enforce the goals and timetables. The Chairman always distinguishes between his personal views and the Commission's policy. In this case, the Commission policy, through the fiscal year 1986 cycle, will be to continue to report to the Congress those agencies which have not complied with our management directive 707 on the issue of goals and timetables.

Mr. HAWKINS. Let me say the Chairman of EEOC cannot possibly state his individual views. What he is stating is a policy view which is interpreted throughout the country as being the view of the Commission and that of the administration. When the head of your Agency comes before this body and says he does not intend to pursue goals and timetables, he signals to individuals in the busi-

ness community, to the unions, and to the employers in this country that they need not subscribe to it. That is the interpretation that is put on his remarks made in public.

I can't see how you can disengage responsible heads of commissions from the views that they express before this body. Mr. Thomas has reversed himself several times, so we question whether or not you are stating the views of the Commission or giving your personal views.

Mr. BIELAN. No; I am stating current Commission policy views as passed by the Commission in these directives. No other new directives have been passed to date.

Mr. HAWKINS. Then are you saying the Commission denies—that the views expressed by Mr. Thomas, as head of the agency, are not the views of the Commission?

Mr. BIELAN. I am neither in a position to affirm or deny what the Commission will finally vote on in policy, or deny what the Chairman says.

Mr. HAWKINS. You just got through saying he was stating his individual views.

Mr. BIELAN. The Chairman, on many occasions, has stated his personal views. As Director of Public Sector Programs, I will carry out Commission policy, whatever that policy may be.

Mr. HAWKINS. Well, we can't compel people to tell the truth, but we certainly can point out when they're lying. Certainly it seems to me that it is demeaning to the legislative process in the Congress to have individuals come before this committee and lie on one day, and then have an explanation given the next day by somebody else that they are upholding the law. I just think the agency itself is being questioned. Every time we get the agency in a corner, they say "we're reorganizing". Well, the agency has been through dozens of reorganizations, I guess—at least I have lost count of them—and every time they reorganize it is something new.

I think we are dealing with an agency that is so discredited that it is beginning to lose faith with the public. In my opinion, we have to take more militant stands on this committee to see that we subpoena somebody to come before the committee and tell us the truth.

Mr. BIELAN. I haven't seen the Chairman's testimony, but I would not believe that the Chairman would lie before any committee or subcommittee of the Congress, Chairman Hawkins.

Mr. HAWKINS. We have additional evidence in this committee hearing that Mr. Thomas at one time was very strongly in support of affirmative action and goals and timetables. Then 1 year later he denied that he favored these.

In one case, the Detroit police case, the EEOC was on one side and the Department of Justice on the other. Now, that certainly doesn't speak well for a lead agency on EEO matters. We have had testimony that EEOC is having difficulty in getting other agencies to agree with your directives. Yet an attempt is being made by Mrs. Collins in her proposal to help you do that, and you give no position on that draft legislation. You offered no suggestions to us on how we can get other agencies to uphold the law.

Mr. BIELAN. On Representative Collins' position, since I was just advised of that position this morning, I can see why the Commis-

sion does not have a position. We have worked closely with Representative Collins' staff in developing positions on this issue, Mr. Chairman.

Mr. HAWKINS. I have no further questions.

Mr. MARTINEZ. Thank you, Mr. Hawkins.

Mr. Gunderson.

Mr. GUNDERSON. No questions, Mr. Chairman.

Mr. MARTINEZ. Before I go to Mr. Williams, following up on what Mr. Hawkins was asking you as far as policy, as I understand it, the Commission is a policymaking board. Then the people who work under them are supposed to carry out that policy in the way they carry on their functions. It seems like what you're saying is that isn't so, that you abide by the law as you understand it, as written by the Congress. Is that right?

Mr. BIELAN. Well, abide by Commission policy, which——

Mr. MARTINEZ. Well, if Commission policy were in conflict with the law, what would you do?

Mr. BIELAN. I'm not aware of any Commission policy being in conflict with the law at present, Mr. Chairman.

Mr. MARTINEZ. OK. In the case of Norton versus Indiana Farm Bureau Cooperative Association, EEOC's field contact and legal standards division sent back a proposed settlement containing goals and timetables in its proposed affirmative action plan. They sent it back. This was done even though existing guidelines on affirmative action permit employers to use goals.

Please explain why that was done.

Mr. BIELAN. I am not familiar with the case, Mr. Chairman. When I was asked to testify, I was asked to testify on the Federal EEO effort and as head of the Federal EEO effort.

Mr. MARTINEZ. We're going to leave the record open and I would hope you would find that out and get us back the information on why that was done. That seems to be just exactly what I laid out, the bureacracy is in conflict with the law because of the Commission's stated policy, or at least your chairman's stated policy.

In that regard, you have five Commissioners, right?

Mr. BIELAN. Yes, Mr. Chairman.

Mr. MARTINEZ. As I have always sat on any board like that that sets policy, it is a majority vote that establishes the policy, not just the Chairman's.

Mr. BIELAN. That's quite correct, sir.

Mr. MARTINEZ. So that if the Chairman makes personal reflections, as you have stated, then no one in the agency should take that as a mandated policy, right?

Mr. BIELAN. The Chairman has on many occasions stated his personal views, and he was very careful to indicate, even in testimony, the difference between his personal views and that of Commission policy, because there is a five-member Commission and we——

Mr. MARTINEZ. Well, I am not sure he really does that. In talking to two Commissioners at the last hearing, I'm not really sure that they understand that.

Mr. Williams.

Mr. WILLIAMS. Mr. Bielan, two questions. First, do I understand correctly that, speaking for the Commission, you're saying the

Commission intends to pursue the implementation of goals and timetables in Federal affirmative action?

Mr. BIELAN. We have no plans at all to change our management directives during the current cycle, fiscal year 1982 through fiscal year 1986, and they require goals and timetables. And we will report to the Congress any agency that does not submit the proper plans.

Mr. WILLIAMS. Thank you.

Mr. MARTINEZ. Mr. Hayes.

Mr. HAYES. Mr. Bielan, what do you see as the EEOC's authority and jurisdiction to collect goals and timetables from all Federal agencies as a part of their affirmative action plans?

Mr. BIELAN. We believe we have that authority, based on title VII, section 717, to issue management directives to Federal agencies, and we have done so. Those management directives are duly passed by the Commission, are coordinated with the Federal agencies, before issuance and passage by the Commission, so everybody has a chance to comment. So in the current set of management directives, we do have authority to collect data and require agencies in developing their affirmative action plans and approaches to have goals and timetables at this time.

Mr. HAYES. How many agencies last year did not submit goals and timetables to you in their affirmative action plans?

Mr. BIELAN. Three. The Department of Justice, the National Endowment for the Humanities, and the Federal Trade Commission.

Mr. HAYES. Is there any intention this year to rectify their failure to submit those goals and timetables?

Mr. BIELAN. I can't speak for the other agencies. Thus far we have not received any goals or timetables from them.

Mr. HAYES. How do we, as a committee, find out what these goals and timetables are?

Mr. BIELAN. Well, as I mentioned in the testimony, appendix B to management directive 707, which is your civilian labor force data broken down nationwide, statewide, by region, by SMSA, statistical groupings of cities, to help establish whatever the goal should be. Those are expected to be put in the plans where there is underrepresentation of minorities, women, and handicapped individuals.

Mr. HAYES. As a followup to the question by my colleague, Mr. Williams, are you aware of any proposed revisions in Management Directive 707?

Mr. BIELAN. We are studying revisions now. One of the concerns of agencies is, there is a multiplicity of reporting formats. We have been working closely with officials of OPM and their CPEF data from computers to see if we could lighten the reporting load but still get the data we need.

Management Directive 707 was sort of the first time in 1981 that any type of directive was put out to the Government that would require uniform reporting formats. We erred on the side of more formats than perhaps less formats. Now with some 4 years, and at the end of the cycle, 5 years, experience, we can go back and review the necessary reporting information. Also, with OPM's improvement in CPEF information, we don't want to have agencies

reporting to them and reporting to us. So we are looking at revising Management Directive 707 when it expires in fiscal year 1986.

Mr. HAYES. To your knowledge, these proposed revisions do not include the elimination of goals and timetables? Is that what you're saying?

Mr. BIELAN. I don't know what the Commission will decide on the goals and timetables issues in Management Directive 707 at this time.

Mr. HAYES. I have no further questions.

Mr. MARTINEZ. Thank you, Mr. Hayes.

Thank you, Mr. Bielan, for appearing before us.

Mr. BIELAN. Thank you, Mr. Chairman.

Mr. MARTINEZ. Our next witnesses are a panel: The Honorable John Agresto, Acting Chairman, National Endowment for the Humanities; Honorable Wendell L. Willkie II, Chief of Staff/Counsel to the Secretary, Department of Education; and W. Lawrence Wallace, Acting Assistant Attorney General for Administration, U.S. Department of Justice.

Gentlemen, your statements, as submitted, will be entered in the record in their entirety. I would ask, for the sake of brevity and time, that you please summarize. We will start with Mr. Agresto.

STATEMENTS OF JOHN AGRESTO, ACTING CHAIRMAN, NATIONAL ENDOWMENT FOR THE HUMANITIES; WENDELL L. WILLKIE II, CHIEF OF STAFF AND COUNSELOR TO THE SECRETARY, U.S. DEPARTMENT OF EDUCATION; AND W. LAWRENCE WALLACE, ACTING ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, JUSTICE MANAGEMENT DIVISION, U.S. DEPARTMENT OF JUSTICE, A PANEL

Mr. AGRESTO. Thank you, Mr. Chairman.

Just over 1½ years ago, William Bennett, then Chairman of the Endowment, wrote a letter to Clarence Thomas, Chairman of the EEOC. That letter set forth our reasons for declining to follow those sections of the EEOC directives that asked us to establish race- and gender-conscious goals and timetables for hiring and for promotion. In that letter we said that we supported a policy of strict nondiscrimination at the Endowment. We explained that this agency was committed to the principle of color, creed, and gender blindness, and that special or differing treatment of individuals on the basis of characteristics such as their race was contrary to what we know to be the best principles of this Nation.

The past 1½ years since we took this stand has been particularly, and sadly, instructive to all of us at the Endowment. Because we stated the simple truth, that all citizens should be judged as equals, without gender preference, privilege, or racial distinction, we have repeatedly been asked to make a defense of ourselves. Because we have stood for the legal and just principle that acts based on racial classification are inherently suspect, it has been repeatedly whispered that we are somehow lawless. Since we cannot be accused of discriminating against anyone, it seems that the only charge against us is that we have openly refused to discriminate.

When we took our stand against compliance with policies based on racial and gender classifications, we did it in the hope that

America had progressed far enough that a person's race or sex or religion would no longer be weighed in the measure. It was, it seems, a vain hope, for we now see around us, contrary to all the good intentions of the law, factions urging us to discriminate precisely on the basis of race and sex. We are told not to worry, that these distinctions are benign, that they probably are temporary. Discrimination, we are told, will be erased some other day. But for today, we are still prodded to make our judgments and set out goals based on race and sex. We view this development as nothing less than tragic.

I wish to be as clear as I can about the grounds for our policy of nondiscrimination. In taking this position, we did not deny the propriety of strong, extensive, and thorough recruiting among all classes and races. We trust that our recruiting efforts can stand up to the closest scrutiny. Our objection was only on the narrower but crucial point—to set out sex-based, race-based goals or timetables for hiring, selection, promotion, or rejection. The National Endowment for the Humanities will continue to cast a wide net for recruiting, as wide a net as possible. No qualified persons of any race or sex should be denied access to equal opportunity at the Endowment. But we will not consider race or sex or color or religion to be reasonable criteria when it comes to hiring or promotion or dismissal.

Some 1½ years ago, in stating this position, we discovered what race-based goals and timetables did to our best principles, our highest ideals. We objected because goals, quotas, set-asides and timetables put an undue burden on the just principle of American equality—the principle that no one should be rewarded or penalized, preferred or held back, because of race or sex or creed. We thought, and we still think, that this was an ideal that all Americans, male or female, black or white, would hope to see prosper.

We were told that goals were more benign than quotas, that one was flexible and acceptable, the other rigid and wrong. But we also know, and have seen, as the former Attorney General wrote on the occasion of the Justice Department's refusal to establish similar goals, that such goals inevitably become standards of measurement, indistinguishable from quotas themselves. For our own part, we have seen our agency—an agency with one of the most thorough and conscientious recruiting policies in the Government—we have seen even our agency criticized for not satisfying some abstract notions of racial- or sex-based balance.

But more. We objected to goals not only because they invariably degenerate into quotas, but because on a moral basis they are indistinguishable from quotas, for they require us to judge people on the basis of their sex and race. No matter how flexible, no matter how hortatory they may be, goals and timetables still suffer from the same fatal and regressive flaw: They ask us to take into account the person's sex or race when we look to fill our jobs. They ask us to perpetuate and promote distinctions based on race and color.

The occasion may never be presented to us again when we as a nation can so clearly and justly say, we will not dwell on race; we will not advance some or reject others because of the color of their skin; we will not tilt the scale for or against a person because of

religion, ancestry, or gender. For ourselves, we will have no one in our agency who will ever think that she or he was hired to meet a timetable or satisfy a racial goal.

To do *anything other than that, to select some people, or some* colors, or some races for special benefits or extra burdens, is as fraught with danger as it is so obviously unjust. Equality before the law, blindness to race, and neutrality to gender, should be our only guiding lights. These are the reasons why we have acted as we have.

Thank you.

[The prepared statement of John Agresto, with attachments, follows:]

PREPARED STATEMENT OF JOHN AGRESTO, ACTING CHAIRMAN, NATIONAL ENDOWMENT FOR THE HUMANITIES

Mr. Chairman and Members of the Subcommittee, I am pleased to appear before you today to reaffirm the commitment of the National Endowment for the Humanities to personned policies that are, as the law specifies, free from any discrimination based on race, color, religion, sex, or national origin.

Just over one and one half years ago, William Bennett, then chairman of the Endowment, wrote a letter to Clarence Thomas, Chairman of the EEOC. (I submit a copy of that letter for the record.) The letter sets forth the reasons for NEH's declining to follow those sections of the EEOC directives that asked us to establish race- and gender-con-scious goals and timetables for hiring and promotion. In that letter we said that we supported a policy of strict non-discrimination at the Endowment. Relying on the determination of the Justice Department that EEOC had exceeded its legal authority by seeking such information, we explained that this agency was committed to the principle of color, religious, and gender blindness, and that special or differing treatment of individuals on the basis of characteristics such as their race was contrary to what we know to be the best principles of this nation.

In taking this position we did not deny the priority of strong, extensive, and through recruiting among all classes and races. We trust that our recruiting efforts can stand up to the closest scrutiny. Our objection was only on the narrower but crucial point—to set out sex-based, race-based goals or timetables for hiring, selection, promotion, or rejection. We will cast as wide a recruiting net as possible—no qualified person should be denied access to equal opportunity at the NEH; but we will not consider race or sex or color or religion to be reasonable criteria when it comes to hiring or promotion or dismissal.

The National Council on the Humanities reinforced the decision of the Chairman by voting overwhlemingly on February 16, 1984, that "the National Endowment for the Humanities should neither favor nor slight anyone because of race, color, national origin, religion or gender." This is the central philoeophical core of our decision.

Since our position is both legal and just, the committee can be assured that I will continue to adhere to it as long as I remain acting chairman of the agency.

Thank you.

Attachment.

NATIONAL ENDOWMENT FOR THE HUMANITIES,
Washington, DC, January 16, 1984.

MR. CLARENCE THOMAS,
Chairman, Equal Employment Opportunity Commission, Washington, DC.

DEAR MR. THOMAS: Enclosed is the response of the National Endowment for the Humanities to EEO-MD707A. Although we have sought to comply with your management directive, we cannot provide the requested indices of "underrepresentation" nor the statement of numerical "goals" concerning employment at the Endowment. We note that the Justice Department has recently taken the position that EEOC exceeds its authority by seeking such information. In addition to the question of authority there is also a question of principle—whether race or ethnicity or gender should influence employment policies. And we strongly believe that different or special treatment by this agency on the basis of these characteristics offends our best principles as a nation.

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It was the glory of America to proclaim to the world: all men are created equal. To believe in human equality and equal liberty can mean nothing less than to treat white and black, male and female, Jew and Gentile as morally equal. Distinctions based on race, ethnicity or gender are not national categories of public reward or rejection. Blindness to color, race, and national origin is the hallmark of civilized justice as embodied in the principles of this Republic.

Americans can only look back with sadness and deep regret at every terrible episode in our history where individuals or races were eithere privileged or penalized because of their color, sex, religion, or national origin. Justice is even more offended when such distinctions are propagated through the acts of the government of all the people.

This principle of equality we take to be so clearly just that we now must decline to comply with your request. We decline even though some might feel that asking us for race—and gender-based "goals" and "timetables" is, in itself, moderate and benign. We do not agree. To request that we set and state numerical "goals" for hiring is to ask us to anticipate hiring on the basis of such "goals." It asks us to consider race or sex or color as reasonable ingredients in such decisions. But they are not. We would find it difficult to envision a time when the answer, "Because she was a black female," or "Because he was a Jew," would be the legitimate response to the question, "Why did you hire or promote or fire this person?"

Moreover, we cannot support the argument that holds that "goals" are somehow distinguishable from preferential treatment. "Goals" announce to the world that race and sex will now be factors in arriving at our results. This is especially clear when "goals" are coupled with the truly pernicious idea of "underrepresentation"—the notion that there is a "proper" proportion of races and sexes and colors for jobs. We cannot comply with any inquiry that has as its premise the idea that there is a proper and improper mixing of races, creeds, colors, or sexes in the workplaces of this country.

Under its current leadership, this agency will neither favor nor slight anyone because of race, color, national origin, religion, or gender. As you know there has been no finding whatsoever of discrimination by this agency. We trust that in the future, as in our past, that all of our decisions will always flow from an honest estimation of merit and worth, not ancestry or gender or faith. Our interest in selecting the best individuals for the job, wherever they might be, and whoever they are, dictates that we at the Endowment cast a wide net when searching for new employees. We have done so and will continue to do so.

With our fellow citizens we hope for the day when all individuals will be evaluated according to merit and work and character, and never on grounds of color or sex or national origin. We believe that the coming of this day can be hastened only by acting on the great principle of equality.

Our ancient faith reminds us that wrongs of privilege, of racism, of discrimination in the past make right, nor do they justify, similar actions today. We believe that the fundamental idea of America is contained in two simple words: No privilege. In this country, and especially in this government, there should be no privileged peoples, no privileged sexes, no privileged religion, no privileged races, no privileged classes.

We hope that you will understand our positoin on this matter. If you have any questions, please do not hesitate to call me. I remain,

Sincerely yours,

WILLIAM J. BENNETT, *Chairman.*

Enclosure.

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National Endowment for the Humanities

SUMMARY SHEET

DISTRIBUTION OF EEO GROUPS AND UNDERREPRESENTATION INDICES BY PATCO AND PAY LEVEL

OCCUPATIONAL CATEGORY AND SES	PAY LEVEL	TOTAL	WHITE			BLACK				HISPANIC				ASIAN AMERICAN/ PACIFIC ISLANDER				AMER. INDIAN ALASKAN NATIVE			
			Male		Female	Male		Female		Male		Female		Male		Female		Male		Female	
			Number	No.	U.I.	No.	U.I.	No.	U.I.	No.	U.I.	No.	U.I.	No.	U.I.	No.	U.I.	No.	U.I.	No.	U.I.
SES and GS/GM 16-18		6	6	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
PROFESSIONAL	GS 5-8	4	0	3	100+	0	0	1	100+	0	0	0	0	0	0	0	0	0	0	0	0
	GS 9-12	45	14	27	24	1	65	2	100+	0	0	1	100+	0	0	0	0	0	0	0	0
	GS/GM 13-15	33	20	9	100+	0	0	3	100+	0	0	0	0	0	0	1	100+	0	0	0	0
	TOTAL	88	40	39	100+	1	32	6	100+	0	0	1	100+	0	0	1	100+	0	0	0	0
ADMINISTRATIVE	GS 1-4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	GS 5-8	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	GS 9-12	33	13	13	97	3	70	3	75	0	0	0	0	0	0	1	100+	0	0	0	0
	GS/GM 13-15	21	16	2	30	0	0	1	33	1	310	0	0	0	0	1	100+	0	0	0	0
	TOTAL	54	29	15	90	3	38	4	58	1	77	0	0	0	0	2	75	0	0	0	0
TECHNICAL	GS 1-4	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	GS 5-8	21	2	10	100+	0	0	9	100+	0	0	0	0	0	0	0	0	0	0	0	0
	GS 9-12	3	0	1	100+	0	0	2	100+	0	0	0	0	0	0	0	0	0	0	0	0
	GS/GM 13-15	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL	24	2	11	100+	0	0	11	100+	0	0	0	0	0	0	0	0	0	0	0	0
CLERICAL	GS 1-4	24	3	7	97	4	100+	8	100+	0	0	1	100+	0	0	1	100+	0	0	0	0
	GS 5-8	53	1	26	100+	4	54	22	100+	0	0	0	0	0	0	0	0	0	0	0	0
	GS 9-12	4	0	1	84	0	0	3	100+	0	0	0	0	0	0	0	0	0	0	0	0
	TOTAL	81	4	34	100+	8	70	33	100+	0	0	1	0	0	0	1	0	0	0	0	0

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Update of Prevention of Sexual Harassment Plan

Informing Management/Employees

1. The Endowment, during FY 84 will reissue the policy of the Federal Government on sexual harassment, including appropriate definitions, examples and available recourse to employees under Title VII of the Civil Rights Act of 1964, as amended.
2. A half-day training session for NEH EEO Counselors on the handling of a complaint where sexual harassment is an issue is planned for FY 84.
3. During Federal Women's Week, information on sexual harassment will be distributed by the Federal Women's Program Advisory Program.

Barrier Elimination

1. Number of barriers identified for analysis and elimination in FY 82: 1
2. Number of these barriers eliminated in FY 82: 1
3. Number of these barriers partially eliminated in FY 82: 0

Barrier No. 1

In the FY 82 AAP, it was identified that clerical employees lacked the necessary skills to adequately use the Endowment's Word Processing computer. This served as a barrier to these employees since they were unable to adequately perform that element of their job. Funds for training have been allocated and a specific computer training program has been developed to address this problem.

Barrier No. 2

Limited training funds, lack of promotional opportunities and few bridge positions serve as barriers to advancement to both clerical and technical employees. Additionally, due to the agency's small size and positive degree requirement for many positions, there are no plans to continue the agency's upward mobility program. A secretarial committee of the Federal Women's Program Advisory Committee was formed during FY 82 to address the special concerns of clerical employees.

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National Endowment for the Humanities

SUMMARY SHEET

FY '82 - '83 Change in Work Force EEO Profile by PATCO

Categories	Years/ % Change	TOTAL ALL #	TOTAL FEMALE #	TOTAL FEMALE %	WHITE MALE #	WHITE MALE %	WHITE FEMALE #	WHITE FEMALE %	BLACK MALE #	BLACK MALE %	BLACK FEMALE #	BLACK FEMALE %	HISPANIC MALE #	HISPANIC MALE %	HISPANIC FEMALE #	HISPANIC FEMALE %	ASIAN AMERICAN/ PACIFIC ISLANDER MALE #	ASIAN AMERICAN/ PACIFIC ISLANDER MALE %	ASIAN AMERICAN/ PACIFIC ISLANDER FEMALE #	ASIAN AMERICAN/ PACIFIC ISLANDER FEMALE %	AMER. INDIAN/ ALASKAN NATIVE MALE #	AMER. INDIAN/ ALASKAN NATIVE MALE %	AMER. INDIAN/ NATIVE FEMALE #	AMER. INDIAN/ NATIVE FEMALE %
Professional	1982	79	44	56	34	49	35	51	1	17	5	83	0	0	3	100	0	0	1	100	0	0	0	0
	1983	83	48	58	34	46	40	54	1	14	6	86	0	0	1	100	0	0	1	100	0	0	0	0
% Change		4	4	2	0	(3)	5	3	0	(3)	1	3	0	0	(2)	0	0	0	0	0	0	0	0	0
Administrative	1982	69	25	36	39	67	19	33	4	50	4	50	1	100	0	0	0	0	2	100	0	0	0	0
	1983	60	22	27	34	68	16	32	3	43	4	57	1	100	0	0	0	0	2	100	0	0	0	0
% Change		(9)	(3)	(9)	(5)	1	(3)	(1)	(1)	(7)	0	7	0	0	0	0	0	0	0	0	0	0	0	0
Technical	1982	23	21	91	2	17	10	83	0	0	11	100	0	0	0	0	0	0	0	0	0	0	0	0
	1983	24	22	92	2	15	11	85	0	0	11	100	0	0	0	0	0	0	0	0	0	0	0	0
% Change		1	1	1	0	(2)	1	2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Clerical	1982	82	69	84	3	8	31	92	10	21	37	79	0	0	0	0	0	0	1	100	0	0	0	0
	1983	81	69	85	4	11	33	89	8	19	34	81	0	0	1	100	0	0	1	100	0	0	0	0
% Change		(1)	0	1	1	3	2	(3)	(2)	(2)	(3)	2	0	0	1	100	0	0	0	0	0	0	0	0

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FY 82 - 83 Change in Work Force EEO Profile by Pay Level

Pay Level	Years/ % Change	TOTAL ALL #	TOTAL FEMALE #	TOTAL FEMALE %	MALE #	MALE %	FEMALE #	FEMALE %	MALE #	MALE %	FEMALE #	FEMALE %	MALE #	MALE %	FEMALE #	FEMALE %	ASIAN AMERICAN/ PACIFIC ISLANDER MALE #	ASIAN AMERICAN/ PACIFIC ISLANDER MALE %	ASIAN AMERICAN/ PACIFIC ISLANDER FEMALE #	ASIAN AMERICAN/ PACIFIC ISLANDER FEMALE %	AMER. INDIAN/ ALASKAN NATIVE MALE #	AMER. INDIAN/ ALASKAN NATIVE MALE %	AMER. INDIAN/ ALASKAN NATIVE FEMALE #	AMER. INDIAN/ ALASKAN NATIVE FEMALE %
Senior Executive Service Levels (GS/GM 16-18)	1982	5	0	0	5	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	1983	6	0	0	6	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
% Change		1	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	1982	248	159	64	73	44	93	56	15	20	59	80	1	25	3	75	0	0	4	100	0	0	0	0
	1983	242	156	64	73	43	95	57	12	18	55	82	1	33	2	66.6	0	0	4	100	0	0	0	0
% Change		(6)	(3)	0	0	(1)	2	1	(3)	(2)	(4)	2	0	8.3	(1)	(8.4)	0	0	0	0	0	0	0	0

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FY 82 - 83 Change in Work Force EEO Profile by Pay Level

Pay Level	Years/ % Change	TOTAL			WHITE				BLACK				HISPANIC				ASIAN AMERICAN/ PACIFIC ISLANDER				AMER. INDIAN/ ALASKAN NATIVE			
		ALL	FEMALE		MALE		FEMALE		MALE		FEMALE		MALE		FEMALE		MALE		FEMALE		MALE		FEMALE	
		#	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%	#	%
GS 1-4	1982	28	19	68	2	25	6	75	7	37	12	63	0	0	0	0	0	0	1	100	0	0	0	0
	1983	27	20	74	3	25	9	75	4	31	9	69	0	0	1	100	0	0	1	100	0	0	0	0
% Change		(1)	1	6	1	0	3	0	(3)	(6)	(3)	6	0	0	1	100	0	0	0	0	0	0	0	0
GS 5-8	1982	72	66	92	2	6	32	94	4	11	33	89	0	0	0	0	0	0	1	100	0	0	0	0
	1983	76	69	91	3	7	37	93	4	11	32	89	0	0	0	0	0	0	0	0	0	0	0	0
% Change		4	3	(1)	1	1	5	(1)	0	0	1	0	0	0	0	0	0	0	(1)	(100)	0	0	0	0
GS-9-12	1982	83	56	67	23	34	44	66	4	31	9	69	0	0	3	100	0	0	0	0	0	0	0	0
	1983	78	49	63	25	40	37	60	4	29	10	71	0	0	1	100	0	0	1	100	0	0	0	0
% Change		(5)	(7)	(4)	2	6	(7)	(6)	0	(9)	1	2	0	0	(2)	0	0	0	1	100	0	0	0	0
GS/GM 13-15	1982	60	18	30	41	79	11	21	0	0	5	100	1	100	0	0	0	0	2	100	0	0	0	0
	1983	55	18	33	36	75	12	25	0	0	4	100	1	100	0	0	0	0	2	100	0	0	0	0
% Change		(5)	0	3	(5)	(4)	1	4	0	0	(1)	0	0	0	0	0	0	0	0	0	0	0	0	0

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Mr. MARTINEZ. Thank you.

The next witness is Hon. Wendell L. Willkie II.

Mr. WILLKIE. Thank you, Mr. Chairman, and members of this subcommittee. My name is Wendell Willkie. I appear here this morning as chief of staff and counselor to the Secretary of Education. I appreciate this opportunity to present the Department's and the Secretary's views on the annual submission of affirmative action plans to the Equal Employment Opportunity Commission.

Let me state at the outset that Secretary Bennett is committed to the full and fair enforcement of all laws within our jurisdiction. This applies in particular to all applicable civil rights laws and regulations. With regard to the questions posed by this committee, we intend, as in previous years and at the appropriate time, to submit to the EEOC an equal employment opportunity/affirmative action report.

To date, the Department has not reached a formal decision regarding the inclusion of numerical goals, quotas, or timetables in the Department's annual EEO report, due at the end of this year. Secretary Bennett has been at the Department for 5 months and is still in the process of reviewing most of the Department's management and personnel practices, as well as applicable laws and regulations.

In the interest of full disclosure to the members of this subcommittee, however, let me review with you briefly the Secretary's own personal views in this area.

In Secretary Bennett's view, true equal employment opportunity is utterly blind to factors such as race or sex. In this regard, the Federal Government, we feel, has a special obligation to ensure that its own employment practices are absolutely unambiguously fair. Race, color, or gender should not in any way influence employment decisions. As a consequence, we are philosophically opposed to the use of hiring quotas, goals, or timetables based on such factors.

In our view, goals and timetables are not only contradictory, they are also morally wrong. By assigning or reserving jobs for some based on factors that should be irrelevant, they contravene our Nation's deepest principles. A truly equitable system of employment will be positive based on the principle that no one should be granted or denied employment opportunity as a result of race, gender, or other invidious criteria.

At the Department of Education, Secretary Bennett will continue the special affirmative efforts of the Department to promote equal opportunity. The recruitment and outreach record at the Department is an excellent one in our view, consistent with the original meaning of affirmative action. Statistics show that the representation of women and minority group members at all levels of the Department of Education greatly exceeds governmentwide averages. In this regard, goals and timetables, as far as the Department of Education is concerned, should thus be viewed as superfluous.

We strongly believe that continuing our efforts at the Department—without the arbitrary and unsettling effects of goals or quotas—will set an example for other agencies to follow. Promoting opportunity for all, rather than setting aside positions for some

based on race or sex, will fulfill the true purpose of equal employment opportunity.

Thank you, Mr. Chairman.

[The prepared statement of Wendell L. Willkie II follows:]

PREPARED STATEMENT OF WENDELL L. WILLKIE II, CHIEF OF STAFF AND COUNSELOR TO THE SECRETARY, U.S. DEPARTMENT OF EDUCATION

Thank you, Mr. Chairman and members of the subcommittee. My name is Wendell Willkie; I appear here this morning as Chief of Staff and Counselor to the Secretary of Education. I appreciate the opportunity to present the Department's views on the annual submission of affirmative action plans to the Equal Employment Opportunity Commission.

Let me state at the outset that Secretary Bennett is committed to the full and fair enforcement and implementation of all laws within our jurisdiction. This applies in particular to all applicable civil rights laws and regulations. With regard to the question posed by this committee, we intend, as in previous years and at the appropriate time, to submit to the EEOC an equal employment opportunity/affirmative action plan.

To date, however, we have not reached a decision regarding the inclusion of any numerical goals, quotas, or timetables in the Department's annual EEO plan, which is due at the end of this year. Secretary Bennett has been at the Department for five months, and he is still in the process of reviewing most of the Department's management and personnel practices, as well as applicable laws and regulations.

If there is a philosophical cornerstone to be found in Secretary Bennett's administrative record, it is that no person should receive preferential treatment in any employment practice on account of race, color, gender, or similar criteria. In his view, true equal employment opportunity is blind to color or sex. In this regard, we believe the federal government has a special obligation to ensure that its own employment practices are absolutely and unambiguously fair. Race, color, or gender should not, by themselves, confer privilege.

In our view, hiring quotas, goals, or timetables should not be based on these very criteria. They are not only contradictory, they are also morally wrong, and furthermore, of questionable constitutionality. Secretary Bennett has never wavered in this belief. At the Department of Education, the Secretary will continue the efforts of the Department to promote equal opportunity for minorities and women. The recruitment and outreach record at the Department is an excellent one—far higher than government-wide averages for women and minorities. We believe that goals and timetables are not needed to ensure equal employment opportunity at the Department.

Quotas, goals, and similar color-conscious employment practices are inherently negative—by assigning or reserving jobs for some, they contravene our nation's deepest principles. A truly color-blind system of employment will be positive—no one will be denied employment opportunities as a result of race, gender, or other irrelevant criteria.

The obvious corollary to this is that federal programs should be designed to promote these opportunities as equitably as possible. The Secretary fully supports active efforts to ensure that women and minorities have equal opportunities to compete, consistent with the original purpose of the Civil Rights Act.

We strongly believe that continuing these efforts at the Department—without the arbitrary and unsettling effects of goals or quotas—will set an example for other agencies to follow. Promoting opportunity for all, rather than reserving access for some will fulfill the true purpose of equal employment opportunity.

Thank you.

Mr. MARTINEZ. Thank you, Mr. Willkie.

The next witness is Lawrence Wallace.

Mr. WALLACE. Mr. Chairman and Members of the Subcommittee, and full committee Chairman Hawkins, I appreciate this, my first opportunity, to appear before your subcommittee since taking office this past February as Assistant Attorney General for Administration. I am pleased to discuss with you the policies and programs of the Department of Justice with respect to equal employment oppor-

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tunity, and I look forward to working with you as we seek to achieve the results that we would all like to have in this area.

My full remarks have been presented to the Subcommittee for the record. This morning I would merely like to highlight some of the more important themes in that full testimony, in order to save time.

In serving as the Assistant Attorney General for Administration, I am responsible for the oversight and control of the Department's administrative functions, from both a policy and operational perspective. My responsibilities include the development and implementation of the Department's budget, the establishment of personnel policies, the conduct of financial activities, the management of computer and other information systems, the procurement of products and services, and the formulation of security policies. All matters pertaining to the organization, management and administration of the Department of Justice are within my responsibility.

In serving as Assistant Attorney General for Administration, another function that is included is serving as the Department's Equal Employment Opportunity Director. In serving in that capacity, I plan to work energetically for continued improvement in the results we seek to have in the area of equal employment opportunity.

The Department of Justice has been described as the largest law office in the world. It is that and much more. The Department's staff exceeds 60,000 persons throughout the country, and it performs many law enforcement functions in addition to providing legal services to the Government. It is essential to our effectiveness that we recruit and retain a work force that is diverse in its background, dedicated in its efforts, and distinguished in its professional excellence. To find and keep such a work force, we must be committed simultaneously to the principles of equal employment opportunity and the merit system.

The Department believes that affirmative recruitment and merit in hiring and promotions are essential to a sound employment policy. I agree with this, and I can tell you from personal experience that it is simply not true that merit and affirmative action are at odds with one another. To the contrary, they are complementary and effective tools for fulfilling the high demands of Federal employment.

The Department of Justice equal employment opportunity policy adheres to the equal employment and merit system principles reflected in Federal laws. Through our affirmative outreach and recruitment programs, we have been able to recruit increasing numbers of talented women and minorities to apply for positions in the Department. Without additional assistance in the hiring and promotion process, we have found, not to my surprise, that increasing numbers of women and minorities are competing successfully for jobs in the Department. The cornerstone of our program, of course, is an energetic and creative recruitment program.

We have submitted an equal employment opportunity plan for women and minorities and another one for handicapped persons. These plans have not included numerical hiring goals. Congress, in passing title VII, expressly disavowed any intention to require nu-

merical hiring goals. Title VII, in the pertinent part, states—and I quote:

> Nothing contained in this subchapter shall be interpreted to require any employer • • • to grant preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of such race, color, religion, sex or national origin in any community • • •

Moreover, the very first principle of the merit system set forth in the Civil Service Reform Act of 1978 provides—and again I quote:

> Recruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.

In my full statement I use the Department's recruitment of law graduates under the Honors Program to demonstrate our success. The program is a formal recruitment program to recruit law students who will graduate or judicial law clerks whose clerkships will end in the following year. The Honors Program is, and always has been, very competitive at the Department.

The Department undertakes an aggressive outreach effort in order to attract a diverse pool of highly talented applicants for the program. This year's Honor Program selectees are once again outstanding. More than half of them are in the top 20 percent of their class, from 60 different law schools. Approximately 50 percent of them are male, 50 percent of them are female, and 15 percent are minorities. All of this was accomplished without resort to numerical quotas or hiring goals. The minorities and women who won these positions did so on merit, and I fully expect that they will progress successfully through the Department based on their high performance and achievement.

In addition to the Honors Program, the Department engages in a number of outreach activities which are discussed in my full statement. I will not go through them in detail here.

The Department, for example, has a higher representation of minorities than the representation of minorities in either the Federal Government's work force or in the civilian labor work force. For example, in 1980 and 1983, the Government's total minority representation was 21.5 percent and 23 percent, respectively. For these same years, the Department of Justice's minority representation was 25.5 percent and 29.5 percent, respectively. Preliminary figures for the Department at the present, excluding the FBI, indicate that the numbers this year are expected to be in excess of 30 percent.

Mr. Chairman, let me conclude by reiterating that the Department of Justice is fully committed to the idea and practices and results necessary, in equal employment opportunity program. I believe that our record of increasing numbers and percentages of women and minorities in the work force over the past several years demonstrates that commitment. Moreover, I accept the challenge to see that it continues.

Thank you.

[The prepared statement of W. Lawrence Wallace follows:]

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PREPARED STATEMENT OF W. LAWRENCE WALLACE, ACTING ASSISTANT ATTORNEY GENERAL FOR ADMINISTRATION, JUSTICE MANAGEMENT DIVISION

Mr. Chairman and Members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss the policies and programs of the Department of Justice with respect to equal employment opportunity. The field of employment is one of the most important in civil rights. Denial of employment because of race, national origin, religion or gender may well render other civil rights academic. Without a fair opportunity to enter and progress in the job market, the rights to purchase a house or obtain an education lose some of their meaning.

In serving as the Assistance Attorney General for Administration, I am responsible for the oversight and control of the Department's administrative functions, from both a policy and an operations perspective. My responsibilities include the development and implementation of the Department's budget, the establishment of personnel policies, the conduct of financial activities, the management of computer and other information system, the procurement of products and services and the formulation of security policies. All matters pertaining to the organization, management and administration of the Department are within my responsibility.

The Assistant Attorney General for Administration also serves as the Director of Equal Employment Opportunity. In that capacity I am responsible for the management of the Department's Equal Employment Opportunity Program. For me, this is a very challenging and rewarding task. Our existing Equal Employment Opportunity Program, set forth at 28 CFR Part 42, is a good and dynamic one, but there is room for improvement and I plan to work energetically for that improvement.

The Department of Justice has been described as the largest law office in the world. It is that and much more. The Attorney General is the Federal Government's chief legal officer. The United States Government is his client, and the employees of the Department are his staff. That staff, which exceeds 60,000 persons throughout the country, performs many law enforcement functions in addition to providing legal services to the departments and agencies of the Government. It is essential to our effectiveness in performing these functions that we recruit and retain a work force that is diverse in its background, dedicated in its efforts, and distinguished in its professional excellence. To find and keep such a work force we must be committed simultaneously to the principles of equal employment opportunity and the merit system.

The Department of Justice believes that affirmative recruiting and merit in hiring and promotions are the essential elements of a sound employment policy. I agree with this; and I can tell you from personal experience that it is simply not true that merit and affirmative action are at odds with one another. To the contrary, they are complementary and effective tools for filling the high demands of Federal employment. The Department of Justice Equal Employment Opportunity Program accordingly is designed to "do justice" to both equal employment opportunity and the merit system.

Our equal employment opportunity plan is consistent with the United States Constitution, and the laws passed by Congress. The laws of the United States protect the rights of every person to pursue his or her employment goals in an environment of racial, religious, ethnic and gender neutrality. More specifically, Federal law prohibits discrimination in connection with employment and provides for the adherence to certain principles of merit in employment practices. Compare 42 U.S.C. § 2000e-16 and 5 U.S.C. § 7201 with 5 U.S.C. § 2301.

The Department of Justice Equal Employment Opportunity policy adheres to the equal employment and merit system principles reflected in these laws. It is our policy and intention to promote vigorously the goal of color-blind justice wherein race, national origin, religion and sex are irrelevant in the estimation of an individual's talents and abilities. Through our affirmative outreach and recruitment programs, we have been able to recruit increasing numbers of talented women and minorities to apply for positions in the Department. Without additional assistance in the hiring or promotion process, we have found, not to my surprise, that increasing numbers of women and minorities are competing successfully for jobs in the Department. The cornerstone of our program is, of course, an energetic and creative recruitment program.

Under the regulations promulgated by the Equal Employment Opportunity Commission, we have submitted an Equal Employment Opportunity Plan for Women and Minorities and an Equal Employment Opportunity Plan for Handicapped Persons. These plans have not included numerical hiring and as you are probably aware, Congress in passing Title VII expressly disavowed any intention to require numerical hiring goals. Title VII provides that:

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"[n]othing contained in this subchapter shall be interpreted to require any employer . . . to grant preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of such race, color, religion, sex or national origin in any community . . . ."

42 U.S.C. § 2000e–2(j).

Moreover, the very first Merit System Principle set forth in the Civil Service Reform Act of 1978 provides that:

[r]ecruitment should be from qualified individuals from appropriate sources in an endeavor to achieve a work force from all segments of society, *and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity.*" (Emphasis added.)

5 U.S.C. § 2301(b)(1).

I would like to use the Department's recruitment of law school graduates under its Honors Program as an example to demonstrate the success of our recruitment efforts. This program is a particularly good example because it historically has been more difficult to recruit and retain women and minorities for attorney positions than for clerical, administrative or law enforcement positions in the Department.

The Honors Program is a formal recruitment program which is conducted in the autumn of each year for those law students who will graduate, or those Judicial Law Clerks whose clerkship will end the following year. The Honors Program is extremely competitive. For the employees who will begin work this year, the program received approximately 3,000 applications for approximately 150 positions.

The Department undertakes a number of aggressive outreach efforts in order to attract a diverse pool of highly talented applicants for the Honors Program. Examples of these efforts include the following:

Annually we publish the Department's Legal Activities Brochure which I have brought for members of the Subcommittee to review. This publication contains a detailed description of the functions of each organization within the Department. The brochure is used by interested applicants to learn about the various components of the Department and to focus on their areas of interest.

In the late summer, we send a supply of the Legal Activities Brochure and the current edition of the Honors Program application form to the placement office of every law school in the country accredited by the American Bar Association. We also send a supply of the same material to minority law student organizations, Federal Judges, and the administrative offices of the state courts. We then make follow-up telephone calls to all placement officers to make sure they have an adequate supply of brochures and application forms.

We attend the annual conventions of minority bar associations to discuss employment opportunites at the Department. Among other things, we contact law school faculty members at these and other events to promote the Honors Program.

We arrange for Department representatives to make presentations at law schools throughout the country. At each school, we contact the minority student organizations to ensure that its membership is notified of our appearance and encouraged to attend.

This year's Honors Program selectees are once again outstanding. More than half of them are in the top 20 percent of their class (about 80 percent are in the top third of their class) and approximately one-third of them are judicial law clerks. They are graduates of more than 60 different law schools throughout the country. Approximately 50 percent are male, 50 percent are female, and 15 percent are minorities. All of this was accomplished without resort to numerical quotas or hiring goals. The minorities and women who won those positions did so on merit, and I fully expect that they will progress successfully through the Department based on their performance and achievement.

In addition to the Honors Program, the Department engages in a number of other outreach activities aimed at enhancing our recuritment efforts for other general schedule positions.

For a better understanding of those activities, I would like to give you a brief description of how the Department organizes its Equal Employment Opportunity program. Beginning at the Department level, I have a staff consisting of a Director and fifteen persons whose role is to promulgate regulations, policy and guidance in the areas of affirmative recruitment and complaint processing. Four of the senoir staff members are Special Emphasis Program Managers, for the Black Affairs Program, the Federal Women's Program, the Hispanic Employment Program, and the Selective Placement Program for Handicapped Persons and Disabled Veterans. The pri-

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mary responsibility of these Special Emphasis Program Managers is to develop targeted recruitment efforts, upward mobility programs, career counseling, commemorative events and special recognition programs. In addition, each of the Department's seven bureaus have full complements of Equal Employment Opportunity Staff specialists including special emphasis managers who perform related functions in the bureaus.

In May of this year, I convened a two-day conference and training session for all of the Department's Equal Employment Opportunity staffs. Our participants included representatives from the Equal Employment Opportunity Commission, as Civil Rights Division of this Department, the Personnel Services, General Counsel and Labor Relations Staffs of the Justice Management Division, as well as outside consultants. This was the first Department-wide meeting on this subject in several years, and I am encouraged by the positive evaluation that we received from the participants. I plan to convene similar sessions in future years.

I would like to highlight several significant outreach activities of the Department.

First, in support of President Reagan's Executive Order 12320, pertaining to Historically Black Colleges and Universities, the Department has developed and implemented a written plan designed to assist these institutions. This assistance includes helping several of the colleges in strengthening their criminal justice program curricula by providing program specialists to conduct on-site seminars in the field of criminal justice. Additionally, we are working to assist other schools that have expressed an interest in establishing criminal justice programs as part of their curricula.

Second, the Department co-sponsors with the Department of Treasury the Interagency Committee on Women in Federal Law Enforcement. The Committee's focus is to enhance the hiring, training and promotion opportunities of women, to address the special concerns of women in the field of law enforcement, and to provide a forum for the discussion of special concerns and issues.

The Federal Bureau of Investigation and the Drug Enforcement Administration, two of our largest bureaus, have established a centralized office to coordinate their minority recruitment efforts for hiring Special Agents.

The Department also has identified and now participates in nearly every major conference sponsored by women, minority or handicapped organizations throughout the country. As we meet today, over twenty of our minority attorneys are representing the Department at the National Bar Association's Annual Convention in Chicago. We know that our participation in this convention in past years has led to the recruitment of a number of Black attorneys to the Department. Other conferences and conventions to which we send recruitment representatives include:

President's Committee on Employment of the Handicapped; Blacks in Government; National Urban League; NAACP; League of United Latin American Citizens (LULAC); National Council of Puerto Rican Women; Federally Employed Women (FEW); International Expo for the Disabled; Hispanic Bar Association; American Indian Bar Association; and IMAGE.

These efforts over the past several years have enabled the Department to increase significantly the employment opportunities for women, minorities, handicapped individuals and disabled veterans. The Department's minority employee representation has been consistently higher than the representation of minorities in the total Federal Government workforce as well as higher than the minority civilian labor force. For example, in 1980 and 1983, the Government's total minority employee representation was 21.5 percent and 23 percent, respectively. For these same years, the Department of Justice minority representation was 25.5 percent and 29.5 percent, respectively.

Mr. Chairman, I would now like to further comment on a point I made earlier, namely, that I intend to work energetically in carrying out my responsibilities as Director of Equal Employment Opportunity for the Department of Justice. I believe that an effective recruitment strategy must be coupled with an equally effective retention strategy when it comes to managing human resources. Given the tremendous investment the Department makes in training and development of its employees, we must ensure that we reap a fair return in the form of experienced administrators, seasoned litigation managers, and law enforcement supervisors. While there is some evidence of our success in this regard, I plan in the future to focus more attention on monitoring the progress of women, the handicapped, and minority employees as they seek to advance to higher levels of responsibility and authority in the Department. In serving as the Assistant Attorney General for Administration, I intend to utilize the full resources of that office to formulate the necessary policies and methodologies that will permit me to accomplish that objective.

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Mr. Chairman, let me conclude by reiterating that the Department of Justice is fully committed to the idea and practice of equal employment opportunity. I believe that our record in increasing the numbers and percentages of women and minorities in our workforce over the past several years demonstrates that commitment. Moreover, I accept the challenge to see that it continues.

Mr. MARTINEZ. Thank you, Mr. Wallace.

It seems like the big hangup is providing numbers, timetables and goals for affirmative action remedies. It seems important that within a certain period of time a discriminatory situation that has existed for years and years must be reversed according to these goals we have set for ourselves in trying to recruit or attract or hire certain kinds of people that have not hitherto been given the opportunity. We're not going to provide those numbers to anybody and we're not going to set down a plan for anybody. What you have done is outline a plan. Let me use your own words. You said "numbers this year." You said "increasing numbers and percentages" in your last few statements.

My question to you is, then, what is the hangup on providing somebody with the plan that you seem to be initiating anyway, just to comply with the law that says you will provide that plan? I don't understand that.

I mean, I understand the ideals that Mr. Agresto was talking about, that we have to be color blind, gender blind, national origin blind, ethnic blind and all that, and those are all things that we're trying to do, because that is inherent in the Constitution of the United States, that all men were created equal. So how do we get hung up on not providing a measureable plan to redress people? If we know in our conscience we are doing it anyway, what is wrong with proving to the world that we are? Answer me that.

Mr. WALLACE. The Department is not unwilling to provide numbers——

Mr. MARTINEZ. They refused to do it. That doesn't square. They are not doing it. They haven't done it. You just stated they are not going to do it.

Go ahead. I'm sorry.

Mr. WALLACE. The Department is not unwilling to provide numbers on its work force profile, which is a factual matter of the progress or the lack of progress the Department might make. The EEOC and the Office of Personnel Management have established what statistics will constitute underrepresentation in each year. The Department will provide a work force profile for each year, which can be utilized in relationship to the underrepresentation figures to determine what our progress is.

What the Department has been unwilling to do, on the other hand, is go along with a procedural requirement of EEOC to project ahead as to what the numbers will be on the basis of goals and timetables.

Mr. MARTINEZ. Why not extrapolate? You know, you're going to do it anyway, because you have it there in front of you. You used the words yourself, progress or lack of progress. That's all we're trying to find out, was there progress or lack of progress. You provide us with the numbers, and then you say, in order to justify that you are working towards that goal—I don't understand. Everybody gets hung up on what we're going to do in the future and how

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we're going to discriminate or not discriminate, and all we're trying to do is eliminate a problem of discrimination that has existed for many years and make it more equal for everybody—and you all seem to agree to that. So all we have to do is know where we are and where we're going.

You know, the only way we can make plans for the future is to know where we're falling down and where we're not trying to attain those goals. And to attain that without denying anybody that is already there. Nobody wants to deny another worker their job. But there certainly is attrition in every situation and that attrition gives us the opportunity to rectify the discrimination that existed before, and I challenge any of you to deny that there has not been discrimination in the past.

Mr. Agresto.

Mr. AGRESTO. And nor, may I add, do we wish to continue it in any way. You're absolutely right, sir. The distinction we are making is a very narrow distinction, but I think, at least for my testimony and my belief, it is a crucial distinction. It is very narrow.

We have done exactly as the Justice Department has done, as my colleague has testified. We have submitted everything that was asked of us by OMB, by the EEOC, by the other agencies, asking for a profile of our work force. We have no problem with that. Where we do draw the line, though, sir, is saying what will be our ratio or sex-based goals for hiring or promotion in the future. We do not want to say—we don't think we can say—that we have certain goals that we intend to fulfill based on race and sex.

Now, we would be glad to show a profile of our work force now and in the future and in the past. But we are really, in fact, obliged, I think, not to say that we have as our goal, or we have as a certain timetable, the hiring of *x*, *y*, or *z* numbers on the basis of sex and race. That seems to us to be beyond what should be called upon us to do.

Mr. MARTINEZ. If you had a situation where you obviously knew that the numbers of employed minorities didn't square with the qualified people available because they have been denied, and you knew that, and you say "well, we want to rectify that"—because I think that's what you're saying but you are reluctant to say how you're going to overcome that."

I don't care what anybody says, if you're going to overcome a discriminatory situation that existed before, you have to at least in your own mind set about how you're going to do it, and when you do that, you set a goal in your own mind, and you even set a timetable, because without a timetable you'll never get it done. It is just good planning for yourself and the agency and anybody else that you say—if I want to know that I want to accumulate anything in the way of productivity, I have got to set some measure by which I'm going to get there.

Mr. AGRESTO. We do not have set for ourselves, either implicitly or explicitly, in the back of our minds or the front of our minds, any particular percentage or ratio of any particular sex or race that we intend to hire at the agency——

Mr. MARTINEZ. Then that's a contradiction of what you said, because what you say is "we do not want to be this way, and if we are this way, then we have to do something——"

Mr. WILLKIE. Mr. Chairman, we do have a goal. Our goal is to ensure that all our employees are considered for employment opportunities, hiring, promotion, irrespective of race, color, sex. That's our goal. We engage in full disclosure.

Mr. MARTINEZ. Then if there's an imbalance in minority employment now, you recognize that something has to be changed?

Mr. WILLKIE. To that point, speaking factually, I think you have before you today three agencies, the statistics for which are above average, Government average, at all levels of employment.

Mr. MARTINEZ. Fine. Then all you have to say is "we have attained our goal" and issue that as a report. But you are reluctant to even do that.

Let me ask Mr. Agresto a question. I am sure you are familiar with your precursor at NEH, Mr. Joseph Duffey.

Mr. AGRESTO. Yes.

Mr. MARTINEZ. In 1980 he stated—and I am going to quote exactly—"in order to overcome the effects of past—" and I want to underscore the word "—past discrimination, the equal employment opportunity policy requires special affirmative action throughout the agency. EEO, therefore, cannot be a neutral policy."

What is your response to this call for nonneutral policy for previous, understand, previous race or sex discrimination?

Mr. AGRESTO. Mr. Duffey's policy on that score is not my policy, nor was it the policy of the agency under Mr. Bennett. The policy of the agency has been set for us, not only in terms of what I stated here in the letter that was sent to the EEOC, but our own national council, which said a year ago that the National Endowment for the Humanities would neither favor nor slight anyone on the basis of race or sex, creed, color or national origin.

We have, contrary to what was said, a neutral, not a nonneutral, policy. I think that is in line with what you said was the goals of the Constitution itself.

Mr. MARTINEZ. Yes; but you completely ignore—the fact that where there has been discrimination, where there is an imbalance, you can, without penalizing anybody, rectify that matter, especially if you get people that are qualified.

Mr. WILLKIE. Mr. Chairman, we all appear before you today as strong adherents and supporters of the 1964 Civil Rights Act, of the role that EEOC otherwise plays, as Mr. Agresto has articulated. We have a strong objection to one, comparatively narrow, part of the request that EEOC has put to us. This does not mean that we are not mindful of the tragic history of this country, where opportunities were denied based on race or sex and other criteria which resulted. It is a tragic heritage that this country had in some respects, and we're all mindful of that. We just disagree as to how we address that situation today.

In our view, the best way to get to a color, race-blind, sex-blind society, is to begin to act on that practice now rather than undermining the original tenets of the 1964 civil rights legislation by injecting the concept of goals and timetables.

Mr. MARTINEZ. I agree with you, and you just said we have to act on this now. Those are your words. We have to act on this now.

Now, without setting some goal, how are we going to act on it? It seems impossible that we can act on it unless we set something in our minds—and you just did—that we're going to do something about it. That's the point. And then you said you are not willing to be in violation of the law, but you actually are in violation of the law.

Mr. WALLACE. Mr. Chairman, may I add, with respect specifically to the Department of Justice—and I believe the other agencies are in the same court with us—that we are succeeding. The statistics and the numbers show our performance in addressing the underrepresentation that used to exist. At the present time I know in the Department of Justice that the statistics for minorities, women, handicapped, and in each category and in each job level category that we look at, as reported by this very subcommittee in a report last August, are meeting or moving toward the goal of eliminating the underrepresentation.

When I look at the submanagers in my department who report through me on affirmative action, I look at it in the same way that EEOC's compliance manual states:

> The most important measure of an affirmative action program is its results. Extensive efforts to develop procedures, analyses, data collection systems, report forms and fine written policy statements are meaningless unless the end product is measureable.

What I am saying to the subcommittee today is that our end results, our achievements, are measureable. We are making progress. I commit to the subcommittee that under my tenure I will continue to achieve that progress in these areas, to eliminate the underrepresentation that existed in the past.

Mr. MARTINEZ. Then you will share with EEOC your report as to what your progress is and what your prospectives are for that progress?

Mr. WALLACE. We will, as we have in the past, report to EEOC what our plans are in terms of removing barriers and affirmative recruitment and pool building activities for the year that is past and the year that is coming. We will report to them the actual facts of what——

Mr. MARTINEZ. But you won't report to them what you expect to accomplish, or in what period of time you will expect to accomplish that?

Mr. WALLACE. We will not report goals and timetables as the EEOC directive presently states.

Mr. MARTINEZ. Forget about the terminology "goals and timetables." You will not share with them what your personal goal is in your role. You are sharing with the subcommittee what you hope to accomplish and achieve, but you will not share that with them?

Mr. WALLACE. I will share with EEOC my personal goals to make best efforts through all of the various mechanisms that we have established in the department. I will describe those mechanisms to EEOC. We will evaluate those mechanisms for the ones that are working and the ones that are not working. We have already begun in the Department under my recent tenure. In February, or maybe it was late January, I brought on a new equal employment

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opportunity director, and for the first time in recent years we have a minority who is also the director of equal employment opportunity who reports to me. We held in May the first departmentwide equal employment opportunity conference, bringining in all of the equal employment opportunity managers and experts from the various bureaus and subcomponents of the Department of Justice. We are looking at new systems right now to aid and assist our efforts, to make sure that we can evaluate how well we are doing with the attempts we make to eliminate underrepresentation and we will report to EEOC the results of these profiles.

Mr. MARTINEZ. You seem like a very responsible person, and very organized. Would you tell me personally if you have set out for yourself goals and timetables?

Mr. WALLACE. I would not describe it as goals and timetables in the legal sense. Before I became an administrator and manager, I was a litigator in the Department for a long time, so I am very careful about the utilization of words as they might relate back to their legal meaning.

On the other hand, I believe within the structure, as it exists at the Department of Justice, we can achieve the ultimate result of eliminating underrepresentation through the mechanisms that I intend to employ and enforce at the Department of Justice.

Mr. MARTINEZ. You say we can achieve. How long will it take you, do you have any idea, a projection? You must have said in your mind "Well, by a certain time I should have done this, this, and this, and I will be able to accomplish this. And this may be more speculative and it may take me a little longer, so I won't set a timetable for it."

Mr. WALLACE. That is one of the problems that the administration and the Department has with the goals and timetables concept, because I don't want to be locked into not being able to exceed some arbitrary projection or limit that we set in the future.

Mr. MARTINEZ. But that's admirable——

Mr. WALLACE. If I go past that, I don't want to say to myself, nor my staff, that it is time to stop. We will continue as long as the civil rights law and the Civil Service Reform Act allow us to continue to——

Mr. MARTINEZ. I am sure that any goal set by any agency, of those 106 that have, nobody would go back and penalize them or be punitive toward them for exceeding their goals. All we're asking for us some kind of an idea of when can we, as the Government, expect that we will practice those things that we profess we believe in.

I far exceeded my 5 minutes and I wanted to stick to the 5-minute rule.

Mr. Hawkins.

Mr. HAWKINS. Well, I don't know that anyone is worried about anybody exceeding any goals and timetables around here, so that gratuitous remark, I think, leaves a little humor in this. I am not so sure you agree, any of you, that goals and timetables are part of the law and that they have been judicially upheld in a series of court challenges. You seem to disagree with that and are stating your personal principles.

Can you make any distinction between what the law requires on the one hand and what your principles seem to be, which is something separate from what the law is?

Mr. WILLKIE. Mr. Chairman, I think——

Mr. HAWKINS. I don't get that distinction.

Mr. WILLKIE. Mr. Chairman, I think that all of us would stoutly resist the notion that any of our agencies violated Federal law in failing to provide goals and timetables in the past. This is not to ignore the fact that in specific cases, where discrimination actions have been brought, that the Federal judiciary has upheld the use of goals and timetables to addresses specific cases——

Mr. HAWKINS. Do you agree with the court in upholding goals and timetables, that goals and timetables are permissible and they are consistently upheld by the courts?

Mr. WILLKIE. Mr. Chairman, they are permissible in specific circumstances, with all due respect, based on a finding of specific discrimination. In the 20-year history——

Mr. HAWKINS. That's not true. In *Weber* you did not have a finding of discrimination.

Mr. WILLKIE. That was a voluntary plan, a private employer and union.

Mr. HAWKINS. There was absolutely no finding of discrimination in the *Weber* case.

Mr. WILLKIE. But it was a voluntary plan.

Mr. HAWKINS. You have set asides of numerical goals and timetables, which upholds the principle of goals and timetables. You don't have a single case that supports your contention that you can completely ignore a directive asking you to set goals and timetables. You say that somehow that is against your moral principles.

Mr. WILLKIE. Mr. Chairman, I think——

Mr. HAWKINS. Can you cite a case that upholds the position that you take?

Mr. WILLKIE. Yes. In the *Bakke* case, the majority opinion of the court was to the effect that goals and timetables, such remedies were appropriate, but only where there was a specific finding of discrimination.

Mr. HAWKINS. Even in *Bakke*, it was the position of the court that you could have race-conscious remedies, which seems to be denied by all three of you.

Mr. WILLKIE. No. I don't dispute, and I don't think any of us would dispute, that the Supreme Court——

Mr. HAWKINS. You disagree that a majority of the court has ruled, in cases brought before it, in upholding goals and timetables?

Mr. WILLKIE. Absolutely not, absolutely not.

Mr. HAWKINS. You do not disagree with that?

Mr. WILLKIE. No. But I don't think that means that any of us have acted in violation of Federal law.

Mr. HAWKINS. Well, your agencies are not willing to accept the concept of goals and timetables. Do you deny that?

Mr. WILLKIE. That is correct. That is correct.

Mr. HAWKINS. And you have been directed to do so?

Mr. WILLKIE. We have been directed to do so by EEOC, whose authority has been challenged by the Attorney General on this

matter, the chief law enforcement official of the United States. I don't think there is anywhere——

Mr. HAWKINS. The Attorney General has challenged many decisions, and he has tried to change the rulings of Supreme Court. I'm asking you about the Supreme Court, not what the Attorney General says, in all due respect to the Attorney General. We may have differences with him on what the law says.

But has the court itself agreed with your position?

Mr. WILLKIE. In some cases, yes, perhaps in others——

Mr. HAWKINS. In what case did they agree with it?

Mr. WILLKIE. I don't think that—I think the more appropriate question to ask, Mr. Chairman, is there any situation——

[Laughter.]

Mr. WILLKIE. You know, if we had been in violation of Federal law, we would have been——

Mr. HAWKINS. Isn't it appropriate to ask you to cite a specific case——

Mr. WILLKIE. I will cite a specific decision for you.

Mr. HAWKINS. A specific Supreme Court opinion upholding your opposition on goals and timetables?

Mr. WILLKIE. Yes. There is another agency, which is not represented here today, which is the Federal Trade Commission. They were another agency which has failed to provide goals and timetables as requested by EEOC.

Now, unlike the three of our agencies, the FTC has had a long-time employment discrimination suit pending against it by career attorneys. In the context of the ongoing litigation—and that suit has been in Federal District Court in the District of Columbia for several years—the FTC told the Federal District judge that they were not going to provide goals and timetables and the judge said he didn't have any problem with that, even though they are under order to pursue other affirmative action remedies.

Mr. HAWKINS. Would you cite the case itself?

Mr. WILLKIE. Yes. It is Bachman versus Pertschuk.

Mr. HAWKINS. All right. We will let you get away with that this morning. I would doubt seriously if that decision said what you said.

However, do you deny that the law as interpreted in *Weber, Briggs* and *Fullilove,* and the host of other cases—I cite three, at least—makes it very plain and clear that numerical goals and timetables are legitimate and are permissible? We're not talking about the conditions under which they did hold it was permissible, and can you cite any source that supports the position which seems to be that there is a difference between what the law says and what your principles dictate you do.

Now, if we can prove to you that the law says what we think it says, and it differs from your principle, which would you uphold, the law or your principles?

Mr. WILLKIE. I think any Federal official who is sworn to uphold the law has to uphold all laws, whether he agrees or disagrees.

Mr. HAWKINS. Then let me ask the gentleman representing the national endowment, who seems to state in a very beautiful way his principle about a colorblind society. If you found that your prin-

ciple was in conflict with the law, would you pursue your principle or would you uphold the law? Which would you do?

Mr. AGRESTO. Let me begin with a question that you and Mr. Willkie were talking about and then come to that.

Mr. HAWKINS. No, answer mine.

Mr. AGRESTO. All right, I will answer your question first, then. If I were told that I must, as the head of an agency, supply goals and timetables as a matter of law, I would resign my position as the head of that agency, for I would not put myself in a position of discriminating on the basis of race and sex.

Mr. HAWKINS. All right. You have been forthright and I appreciate it. I understand where you're coming from.

I have no further questions, Mr. Chairman.

Mr. MARTINEZ. Thank you, Mr. Hawkins.

Mr. Williams.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Mr. Willkie, in expressing, to use Mr. Hawkins' term, your personal views, and apparently those of Secretary Bennett, you refer in your testimony to quotas, goals, and timetables as contradictory, contravening our Nation's deepest principles, and morally wrong. And then, in apparent reference to the law, you say, "However, we have not reached a decision regarding the inclusion of goals, quotas, and timetables in the Department's annual equal employment opportunity plan."

So while you and Mr. Bennett think they are contradictory and contravene our Nation's deepest principles and are morally wrong, you haven't decided whether or not you're going to do it. Why?

Mr. WILLKIE. We don't need to submit that plan until the end of the year. If we can avoid providing goals and timetables while otherwise being fully consistent with all legal requirements, that is the position that we will take. However, I think it is the Secretary's view that it is incumbent upon him, as a Cabinet officer, as the Secretary of a major department, to fully consult with the requisite offices of the Department, to seek its legal advice, the Office of the General Counsel, and ensure that whatever position he takes fully comports will all legal requirements.

Mr. WILLIAMS. As an attorney, would you be comfortable if each Secretary, each member of the Cabinet, devised his or her own methods for deciding how our people are to be assured equality of employment opportunity, or do we need a Federal-wide system of approaching that serious national effort?

Mr. WILLKIE. We have no problem—indeed, we fully support the oversight role of the Equal Employment Opportunity Commission. But I think within that context, obviously different departments and agencies have different programs, different plans, for addressing equal employment needs within their respective offices.

Mr. WILLIAMS. We are really talking here not so much, in my judgment, about a technique that contravenes what our Founding Fathers intended but rather, a technique that is simply a management tool. Setting a target for rate of progress is a management tool. It is long used in this country. Private industry uses it with regard to equal employment in hiring practices. The Federal Government, at least parts of it represented at this table, and appar-

ently one other, have decided that it is not a good management technique.

With what will you replace it?

Mr. WILLKIE. With an effort to ensure that individuals are considered for employment opportunity based on merit alone.

Mr. WILLIAMS. And would you do that Federal-wide through all departments and agencies?

Mr. WILLKIE. Philosophically, yes. You know, I am here speaking on behalf of the Department of Education.

Mr. WILLIAMS. And who will decide who is of merit?

Mr. WILLKIE. Any employer.

Mr. WILLIAMS. Will we have a merit standard Federal-wide, governmentwide, or will we have one for Secretary Bennett and a different one for Attorney General Meese?

Mr. WILLKIE. Congressman, I think that obviously any Cabinet secretary, any agency head, any Government employer, has to make his or her own evaluations as to the respective merits of employees in considering opportunities for promotion or demotion or whatever employment actions are taken. Obviously, there are all kinds of constraints and considerations. One has to operate within the context of all civil service requirements and such. But I would doubt that any of us dispute the notion that an employer has to exercise a certain latitude of discretion in evaluating the merit of employees in making employment decisions.

Mr. WILLIAMS. On the face of it, I prefer your system. I prefer hiring people on merit and, were I a secretary, would prefer to do it that way. However, in this land we have found that law should substitute for personal opinion when it comes to matters as important as not excluding huge portions of the American population from equality of hiring. So we have substituted for our own personal judgments with regard to merit the law. You want to reverse that.

Mr. WILLKIE. No, I do not. We fully support all applicable civil rights laws. Our position was based—as the general counsel of the National Endowment for the Humanities, I would not have advised the chairman of that agency, Mr. Bennett, that he could take that position, but were it not for the fact that the Attorney General of the United States had taken that position based on the legal position that in seeking those specific goals and timetables EEOC had exceeded its statutory authority.

Mr. Clarence Thomas, in appearing before Congresswoman Collins' committee, said that he did not think that Mr. Bennett had been in violation of any law as a consequence.

Mr. AGRESTO. Can I underscore that?

Mr. WILLIAMS. Please.

Mr. AGRESTO. Even though we have laid out philosophical positions, I would not want to leave you with the impression that any of us think we are—in fact, I think all of us know we are not—in violation of any law.

When close to 2 years ago the Attorney General William French Smith issued a statement that this management directive by EEOC did not have the binding force of law, and that his Department did not choose to comply with it, he did it on the best reading of the law as he had it. We read that. We examined the law ourselves

and, in fact, came to the same conclusion, that this management directive did not have the binding force of law. Other agencies did the same.

When we appeared as an agency before Congresswoman Collins just about a year ago, the Director of OMB testified that we're not in violation of any law that he knew; the Director of EEOC testified we were not in violation of any law that he knew. Our National Counsel and the Justice Department came to the same conclusion.

I would not want to leave you with the impression that we think we are in any way in violation of the law. We have refused to comply with the management directive, which management directive we do not think comports with the necessities of the law.

Mr. WILLIAMS. I understand that. And in closing—I know my time is about to expire—let me say that I have not indicated my belief, I have not indicated a judgment, that you are in violation of the law. I think you're skirting it. What I believe you want to do is substitute the subjective opinion of the employer for regulations which have provided good management techniques with which to meet the letter of the law. You prefer to substitute the subjective judgment of the Secretary of Education in hiring people on something called "merit". I just think that's a substitution that is not in the best interest of equal employment opportunity.

Mr. AGRESTO. If I can extend your time for a second, we think it would be far better, we know it is far better, to judge people on the basis of merit and to hire and select and promote people on the basis of merit than on the basis of race.

Mr. WILLIAMS. Of course, you do that, too. That has been done.

Mr. AGRESTO. We think, therefore, it has been more than just a management directive. I mean, we do have philosophical objections, real objections, to hiring people with race-conscious, gender-conscious goals in mind. We will not hire them on that basis. We think that to be repugnant.

Mr. MARTINEZ. The time of the gentleman has expired.

Mr. Hayes.

Mr. HAYES. Thank you, Mr. Chairman. I will be brief and live within the 5 minutes. Needless to say, I am very bothered about the positions that have been taken by the witnesses here.

I understood you to say that you are supportive of the 1964 Civil Rights Act. I want to be clear as to what steps you see that one should take to measure violations of that act and any corrections if such violations are found, which have been the case. Are you saying, in the absence of the endorsement of a procedure used in goals and timetables to do it, we should depend on the judgment of all citizens based on their understanding of the need for equality? How do you measure change? Should we wait on that small trickle of human kindness to flow through the same veins they have flowed through over the years to correct the wrongs in the area of discrimination in employment, which we admit exists, or should we by chance continue to wait another several hundred years to correct a situation which right here in this august body of which I'm a part—435 Members of the House of Representatives, and we only have 20 who are black, as you well know, Mr. Wallace; we have none in the Senate—in the pressures that are developing, particu-

larly among the younger generation, who begin to move toward some equality when it comes to representation.

I only use that as a hypothetical example. I am just bothered by a situation where we represent 12 percent of the population according to census figures, where roughly 53 percent of this country are women, and yet we only have 23 female Members as I think of the House of Representatives that happen to be women. Should they use this measurement of numbers in order to push for change, or do we have to wait on the understanding of largely white males to bring about this change?

These are the things that bother me in terms of moving in the direction of effectuating changes. You don't want to use goals or timetables.

Mr. WALLACE. Representative Hayes, may I reply?

In terms of the dismay that you express with regard to certain situations that may exist in various components of this country, I could not disagree with you at all. Congress, in its wisdom, we believe, I believe, has acted particularly in the area that we're talking about today of Federal sector civil service employment. Congress, also, on the other hand, in its wisdom, exempted the Congress from all of the civil rights laws.

But in passing the Civil Service Reform Act, specifically section 310, in 1978, Congress established a minority recruitment program. In that program, the law directs in the pertinent part that executive agencies shall conduct a continuing program of recruitment of members of minorities for positions in the agency in a manner designed to eliminate underrepresentation of minorities in the various categories of civil service employment.

Further, in the Congress' conference report, the conferees stated that it was their understanding and intention that that section is solely a recruitment program and not a program which will determine and govern appointments. Congressman Garcia, the principal sponsor of that particular provision, stated that it will strengthen the affirmative action program of the Civil Service by instituting statutes which enforce a meaningful outreach and recruitment program while in no way even implying hiring quotas.

Finally, I would like to state with regard to our reading of the law, if you look at the other provisions of the Civil Service Reform Act passed at the same time, that act expressly requires that personnel decisions be made solely on the basis of merit and there is a specific prohibition of preferential treatment for the purposes of improving or injuring the prospect of any particular individual or category of individuals.

It is within that framework of law that we operate, but it is my belief that the elimination of the underrepresentation that Congress called for can and is being eliminated specifically in the Department of Justice.

Mr. HAYES. Let me get in one more comment. I've got one minute left. This is directed to your Department, Mr. Wallace.

According to the draft annual report of the employment of minorities, women and handicapped individuals in the Federal Government for fiscal year 1983, the Department of Justice ranked 32d overall out of 70 Federal agencies, 16th for the average grade of female white collar workers, 45th for average grade of Hispanic

white collar workers, 33d for percentage of females in the professional work force, and 44th in the percentage of minorities in the professional work force.

How do you explain these dismal figures when the Department of Justice is the lead law enforcement agency of the United States Government? How do you explain these numbers?

Mr. WALLACE. As I indicated in my prepared statement that was submitted for the record, there are improvements that the Department of Justice can and should make. What I would also like to add are the statistics for the record to date that were in the August report of the Subcommittee, which indicates that when you take the total minority employees at Justice and comparing it to the overall Government, we were at 29.5 percent in that same year, and the Government was at 23 percent.

If you take the grades 16 through 18 and the Senior Executive Service, the highest level of the civil service, the Government was at 13 percent and Justice was at 15 percent. If you take the next highest level, the Government was at 10 percent, Justice was at 13 percent. If you take the next level down, the Government was at 17.5 percent, Justice was at 23.5 percent. You take the next level down, the Government as a whole was at 29 percent, Justice was at 36 percent. If you take the next level down, the Government as a whole was at 35.5 percent, and Justice was at 50 percent.

I indicate those statistics as at that point in time Justice had come farther than it had at any prior point, and after we get the next year's data in, it is our preliminary expectation that further progress will be made and we will continue our efforts to keep that progress going forward.

Mr. HAYES. You're saying we have come this far, up until this moment, and we don't want to go backward; we want to continue to move forward.

Mr. WALLACE. Yes, sir.

Mr. HAYES. OK. Thank you. No further questions.

Mr. MARTINEZ. Thank you, Mr. Hayes.

I would like to thank the witnesses for appearing before us.

In closing, gentlemen, I would like to say—and especially to Mr. Wallace—everything you have said and done and indicated today indicates that you are very conscious of percentages and numbers and how fast those percentages and numbers grow to reflect a positive action, which indicates, in my own opinion, that you have set timetables and goals, whether you accept them or admit them.

More than that, in every day, in every one of our lives, all of you, and me, too, we do set timetables and goals in everything we do, even in Government. We are given 2 years in which we promise our constituents to do a certain thing, and then we set out to try to accomplish that within that 2 years so that they may give us another two years. So like all of you in your jobs, in your personal lives, you have set timetables and goals, and there is nothing wrong with that. Somehow you've got to get over that.

I thank you again for appearing before us.

Mr. AGRESTO. Thank you, sir.

Mr. WILLKIE. Thank you, sir.

Mr. MARTINEZ. Our next panel consists of the Honorable Arthur Flemming, chairman of the Citizens' Commission on Civil Rights,

and Rick Seymour, Lawyers' Committee for Civil Rights Under Law. Gentlemen, would you please come forward.

The chair would like to again announce that all prepared statements will be entered into the record in their entirety, and the witnesses need only summarize their statements.

Dr. Flemming, inadvertently you were told you were restricted to 5 minutes. That is not so. Under the House committee rules, the Members of the Committee are restricted to 5 minutes in their questioning. As you have noticed, we don't always adhere to that. So you are free to take the time you need.

STATEMENT OF ARTHUR S. FLEMMING, CHAIRMAN, CITIZENS' COMMISSION ON CIVIL RIGHTS; AND RICHARD T. SEYMOUR, DIRECTOR, EMPLOYMENT DISCRIMINATION PROJECT, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, A PANEL

Dr. FLEMMING. I will make my comments brief, Mr. Chairman. I appreciate very much the opportunity of appearing before you on this matter. I have noted with interest that on July 25, a year ago, that I appeared before another subcommittee dealing with this same issue and I listened to some of the same witnesses at that time preceding me.

As I understood the letter that you wrote me, at least one of the purposes of this hearing is to consider H.R. 781, introduced by Representative Collins. I do appreciate the opportunity of appearing in connection with your consideration of this bill, as well as your consideration of some oversight matters.

I feel that the civil rights community is indebted to you because of your willingness to come to grips with one of the most important issues confronting our Nation in this area. The Congress has unequivocally, it seems to me, made the Equal Employment Opportunity Commission responsible for providing the Federal agencies with rules, regulations, and instructions for the development of affirmative action plans in the area of equal employment, plans designed to correct the underrepresentation which has been defined in the statute.

This responsibility has been spelled out in amendments to title VII of the Civil Rights Act of 1964 and in the Civil Service Reform Act. In addition, the Congress has stated that the heads of departments, agencies or other units shall comply with these rules, regulations and orders.

The question has been raised, Mr. Chairman, by you and your colleagues, as to whether the refusal on the part of the Department of Justice, the Endowment for the Humanities, and the possible refusal on the part of the Department of Education to comply with the regulation of the Equal Employment Opportunity Commission relative to goals and timetables, is a violation of law.

I have had the opportunity and the privilege of serving in a number of positions in the executive branch over the years. As a result, I have come to respect and value our system of checks and balances. It seems to me that in this instance the Congress has been very clear in placing very definite responsibilities on the Equal Employment Opportunity Commission. It has also been very clear in saying that the departments and agencies of the Govern-

ment, all of them, no exceptions, shall comply with those rules and regulations.

I recognize that the Attorney General of the United States well over a year ago refused to comply with one of the regulations of the Equal Employment Opportunity Commission, saying that in his judgment they had exceeded their authority. The Congress did not grant to the Attorney General, or to anyone else, the authority to overrule the Equal Employment Opportunity Commission. If the head of a department or agency concludes that the Equal Employment Opportunity Commission has exceeded its authority, it can come to the Congress and ask for relief. It could attempt to go into the courts and ask for relief. But it can't get relief from the Attorney General of the United States. He doesn't have authority to overrule the Equal Employment Opportunity Commission. So, in my judgment, if any head of a department or agency says "I will not comply with that regulation because of my personal views", the head of that department or agency is putting his or her personal views above the law of the land. The head of that department or agency is violating her or his oath of office. The head of that department or agency is in violation of the law.

I believe that should be very clearly spelled out if we're going to continue to function effectively under our system of government. As a former Cabinet officer, I could not conceive of being confronted with a rule or regulation issued by the Civil Service Commission or the Equal Employment Opportunity Commission and say I'm not going to comply with it because I don't agree with it, as a matter of principle or for any other reason. It would be up to me to comply with it until such time as it was changed.

I believe that Congress has decided that it wants Federal agencies functioning in their capacities as employers to include the opening up of opportunities for minorities and women as one of their management objectives. It is decided that it wants them to develop action programs that will correct the underrepresentation that is the direct result of institutional discrimination as it has been practiced over the years.

The Equal Employment Opportunity Commission, in developing instructions for these action programs, has called for, among other things, goals and timetables, a tool of administration which is used time and again by administrators in order to measure progress or lack of progress in attaining management objectives.

The Citizens' Commission on Civil Rights, which I chair, issued an in-depth report in June of 1984 entitled "Affirmative Action to Open the Doors of Job Opportunity—a Policy of Compassion and Fairness That Has Worked."

In light of your dialog, Mr. Chairman, with the preceding witnesses, I would like to just call attention to one portion of this report. It has to do with the use of goals and timetables as a management tool.

In developing this report, eight members of the Commission met in 1983 in an all-day session with representatives of four major corporations drawn from diverse segments of American business: The Equitable Life Assurance Society, represented by its recently retired chairman and chief executive officer, Cloy Ecklund; the Hewlett-Packard Co., represented by Harry Portwood, the company's

manager for staffing and affirmative action; the Kaiser Foundation Health Plan, represented by Robert Ericson, its senior vice president for legal and government relations; and the Control Data Corp., represented by Sam Robinson, the corporation's general manager for staffing and equal opportunity planning.

We set forth the results of that consultation and had this to say as one part of this chapter:

The other set of affirmative action measures consists of applying management techniques that are standard in other areas to the objective of increasing the employment of minority, female, and handicapped persons, and of advancing them to higher levels of responsibility and authority. An initial step is establishing numerical goals as is done in the areas of sales, production, budgeting, and other corporate activities. All of the corporate representatives saw the establishment of goals and timetables as an important part of their affirmative action programs. Control Data establishes goals and timetables even when there is no underutilization by Government standards. It's representative, Mr. Robinson, said the company could not possibly have made the progress it has achieved without setting goals for itself. Equitable, represented by Mr. Ecklund, their former chief executive officer, considers numerical goals as a necessary benchmark against which to measure progress in achieving the company's employment objective.

That is the experience of private industry in this particular area.

Just prior to the issuance of our report the Supreme Court released its decision in the *Memphis Fire Department* v. *Stotts* case. Some who have opposed the use of goals and timetables, including the Department of Justice, as a part of affirmative action plans have concluded that this decision has seriously undermined the legal foundation for affirmative action plans which have been developed by both public and private administrators.

I would like, therefore, to share with you the following views of our Commission on this particular development. I will, in the interest of time, skip a part of that quotation, Mr. Chairman, but just ask that it be included in the record, and then just come over to our conclusion.

The Supreme Court's decisions in the *Bakke*, *Weber* and *Fullilove* cases strongly indicate that race-conscious remedies, including goals and ratios, are a lawful means for dealing with the effects of prior discrimination. Contrary to the position taken by the Justice Department, the Court's decision in the *Memphis Firefighters* case is confined to protecting white workers who have seniority from being laid off, and does not throw prior decisions or race-conscious remedies in hiring or promotion into doubt.

The Citizens' Commission devotes a chapter of its report to identifying some of the results that have been achieved as a result of the development and implementation of affirmative action plans in the field of employment. As I have already indicated, it is based in part on the consultation that we had with the representatives from industry.

After summarizing our discussions, we conclude:

Thus, at least at the level of top management, each of the companies sees affirmative action as good business. They also see it as a part of "good corporate citizenship," both with regard to the communities where they operate and with regard to the Nation at large.

Based on all of the evidence relative to experience with affirmative action, we included the following in our list of findings:

Affirmative action remedies have led to significant improvements in occupational status of minorities and women. Gains have occurred in the professions, in managerial positions, in manufacturing and trucking, in police and fire departments, and

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other public service positions. These gains are linked specifically to enforcement of the goals and timetable requirements of the contract compliance program and to court orders and consent decrees for ratio hiring.

That is why I believe the Congress has made an outstanding contribution to helping the Nation achieve the goal of equal opportunity in employment by placing on the Equal Employment Opportunity Commission specific responsibilities in dealing with the Federal Government, functioning in its capacity as an employer, and by requiring agency heads to comply with EEOC directives.

I favor strengthening the authority of the Equal Employment Opportunity Commission to enforce the nondiscrimination policies in Federal employment which are now the law of the land. H.R. 781, as introduced by Representative Collins, if enacted into law, would help to make it possible for the Federal Government to become a model employer in the area of equal employment. The procedural requirements set forth in the bill are consistent with the concept of due process. The sanctions of the bill are addressed to those officials of the Federal Government who decide to violate their oath of office by turning their backs on the laws passed by the Congress and the rules, regulations and instructions issued under the law. The inclusion in the bill of a provision for the inclusion of numerical employment goals in affirmative action plans would constitute a reaffirmation by the Congress of the steps that must be taken if the rhetoric of equal employment is to be translated into action.

Thank you very much, Mr. Chairman.

[The prepared statement of Arthur S. Flemming follows:]

PREPARED STATEMENT OF ARTHUR S. FLEMMING, CHAIRMAN, CITIZENS' COMMISSION ON CIVIL RIGHTS

I. INTRODUCTION

A. I appreciate the opportunity of appearing before the members of this committee in connection with your consideration of H.R. 781.

B. The civil rights community is indebted to you because of your willingness to come to grips with one of the most important issues confronting our nation in this area.

II. BODY

A. The Congress has unequivocally made the Equal Employment Opportunity Commission responsible for providing the Federal agencies with rules, regulations and instructions for the development of affirmative action plans in the area of equal employment—plans designed to correct the "underrepresentation" which has been defined in the statute.

1. This responsibility has been spelled out in amendments to Title VII of the Civil Rights Act of 1964 and in the Civil Service Reform Act.

2. In addition the Congress has stated that the heads of departments, agencies, or other units shall comply with these rules, regulations and orders.

B. In other words, Congress has decided that it wants Federal agencies, functioning in their capacities as employers, to include the opening up of opportunities for minorities and women as one of their management objectives.

1. It has decided that it wants them to develop action programs that will correct the "underrepresentation" that is the direct result of institutional discrimination as it has been practiced over the years.

2. The EEOC in developing instructions for these action programs has called for, among other things, goals and timetables—a tool of administration which is used time and again by administrators in order to measure progress or lack of progress in attaining management objectives.

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C. The Citizens' Commission on Civil Rights, which I chair, issued an in-depth report entitled "Affirmative Action to Open the Doors of Job Opportunity—a Policy of Compassion and Fairness That Has Worked."

1. Just prior to the issuance of our report the Supreme Court released its decision in the *Memphis Fire Department* v. *Stotts* case.

a. Some who have opposed the use of goals and timetables as a part of affirmative action plans have concluded that this decision has seriously undermined the legal foundation for affirmative action plans which have been developed by both public and private administrators.

b. I would like, therefore, to share with you the following views of our Commission on this development:

"Justice Byron White, speaking for a 6–3 majority, said that

"Title VII precludes a district court from displacing a non-minority employee with seniority under the contractually established seniority system absent either a finding that the seniority system was adopted with discriminatory intent or a determination that such a remedy was necessary to make whole a proven victim of discrimination . . .

"Justice White noted the special deference that Congress had accorded to bona fide senority system in Title VII, adding that even a person who is adversely affected by discrimination 'is not automatically entitled to have a non-minority employee laid off to make room for him.' He also based the decision on Section 706(g) of Title VII, which states that a court may not order the reinstatement of an individual as an employee if he was discharged for a reason other than discrimination (in this case less seniority). His opinion specifically left open the question of whether the city of Memphis could voluntarily have modified its seniority system to assure the retention of minorities during a layoff. Justice Blackmun, though disagreeing with the majority, viewed the ruling as limited, saying that the majority opinion 'is a statement that the race-conscious relief ordered in these cases was broader than necessary, not that race-conscious relief is never appropriate under Title VII.'

"The Supreme Court's decisions in the *Bakke, Weber,* and *Fullilove* cases strongly indicate that race-conscious remedies, including goals and ratios, are a lawful means for dealing with the effects of prior discrimination. Contrary to the position taken by the Justice Department, the Court's decision in the *Memphis Firefighters* case is confined to protecting white workers who have seniority from being laid off, and does not throw prior decisions or race-conscious remedies in hiring or promotion into doubt."

2. The Citizens' Commission devotes a chapter of its report to identifying some of the results that have been achieved as a result of the development and implementation of affirmative action plans in the field of employment.

a. The chapter is based in part on an all-day meeting with representatives of four major corporations, namely, Equitable Life Assurance Society, Hewlett-Packard Company, Kaiser Foundation Health Plan, and the Control Data Corporation.

b. After summarizing our discussions we conclude: "Thus, at least at the level of top management, each of the companies sees affirmative action as good business. They also see it as part of 'good corporate citizenship' both with regard to the communities where they operate and with regard to the nation at large."

3. Based on all the evidence in this chapter we included the following in our list of findings: "Affirmative action remedies have led to significant improvements in occupational status of minorities and women. Gains have occurred in the professions, in managerial positions, in manufacturing and trucking, in police and fire departments and other public service positions. These gains are linked specifically to enforcement of the goals and timetables requirements of the contract compliance program and to court orders and consent decrees for ratio hiring."

4. That is why I believe the Congress has made an outstanding contribution to helping the nation achieve the goal of equal opportunity in employment by placing on the Equal Employment Opportunity Commission specific responsibilities in dealing with the Federal Government, functioning in its capacity as an employer, and by requiring agency heads to comply with EEOC directives.

D. I favor strengthening the authority of the Equal Employment Opportunity Commission to enforce the nondiscrimination policies in Federal employment which are now the law of the land.

1. H.R. 781, as introduced by Representative Collins, if enacted into law would help to make it possible for the Federal Government to become a model employer in the area of equal employment.

2. The procedural requirements set forth in the bill are consistent with the concept of due process.

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3. The sanctions in the bill are addressed to those officials of the Federal Government who decide to violate their oath of office by turning their backs on the laws passed by the Congress and the rules, regulations and instructions issued under the laws.

4. The inclusion in the bill of a provision for the inclusion of numerical employment goals in affirmative action plans would constitute a reaffirmation by the Congress of the steps that must be taken if the rehetoric of equal employment is to be translated into action.

Mr. MARTINEZ. Thank you, Mr. Flemming.

Mr. Seymour.

Mr. SEYMOUR. Thank you, Mr. Chairman. My name is Richard Seymour and I am testifying today on behalf of the Lawyers' Committee for Civil Rights Under Law. In addition to the prepared remarks, some parts of which I would like to highlight in the testimony, I have a number of specific responses to offer to what the administration witnesses had to say this morning. So there will be a part A and a part B to the testimony.

First, it seems to us that there can be little debate over the meaning of the statutory terms that agencies are required to develop affirmative action plans in section 717(b) in title VII. The specific language that became that section originated in the Senate. It was offered as an amendment to the bill in committee by Senator Cranston. The committee report described the language as requiring plans with full consideration of particular problems and employment opportunity needs of individual minority group populations within each geographic area—in short, an underutilization analysis. Then the committee report said that something is to be done with this information. It is not simply to be an academic data base locked off in an ivory tower.

The committee expects the Commission, said the committee report, to require that agency plans include specific regional plans for large Federal regional installations and other regional offices with particularly deficient records of progress in equal employment opportunity, so you have to match the underutilization analysis to what has to be done to correct the deficiency.

It goes on to say that this data must be obtained and comparisons made on a semiannual basis so there can be an effective evaluation and that the appropriate allocation in personnel and resources for each agency have to be reviewed by the Commission in order to make sure they are carrying out this directive.

Now, on the floor of the Senate, Senator Cranston gave a further explanation. He described everything that would be accomplished by his amendment, extending title VII to the Federal sector. The first thing he mentioned and the second thing he mentioned was the importance of these affirmative action plans. The first goals of the legislation was to put the Congress on record in favor of "maximum affirmative action to provide Federal jobs and real advancement opportunities for minority groups in Federal service."

The second goal was to specifically charge the Civil Service Commission with the responsibility to require all agencies to comply with the directive. He added that that would require that Federal agencies "make a special effort to employ and promote qualified minority persons according to their relative proportions in the population of the area surrounding agency field offices." If that is not goals and timetables, I do not know what it is.

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Now, the importance of affirmative action plans is well illustrated by the private sector, where major national companies have for years had affirmative action plans, with underutilization analyses and goals and timetables developed under the guidance of the Office of Federal Contract Compliance Programs. They find these programs not just simply good to have, not simply useful to have, but according to their chief executive officers in testimony that organization resources counsellors put forward, essential to have.

The reasoning is the same as that which applies to the Federal Government. Any large employer has facilities scattered across the country. It is simply not possible to keep day-to-day tabs on every single personnel action, to make sure there are not stereotype decisions tending to exclude women and members of minority groups, or to make sure that actual bigotry does not affect personnel decisions, or to make sure that there are not objective practices with the unintentional effect of excluding women and minorities.

Here we come face to face with one of the major reasons for objective requirements; that is, that any large employer, the Federal Government included, gets many more applications than there are vacancies. The tendency of any personnel officer is to try to find some way to cut down the applications to a manageable number, so instead of 1,000 people to be considered for 50 vacancies, you only have to interview 50. It makes the life of the personnel officer much more reasonable if he only has to interview 50 people.

The problem that affirmative action plans are directed toward is how do you make sure that the way you make the cut and, after the cut is made, the way you make the actual hiring decisions, does not exclude women and members of minority groups. The view of major private employers in this country is you have to have affirmative action plans, underutilization analyses, goals and timetables, to give management the tools to make sure that there is no exclusionary effect.

Now, if Federal agencies have no difficulties with equal employment opportunity, one would expect that they would never have any findings of liability entered against them, that the agencies would never have to enter into expensive settlements or have large-scale awards of back pay entered against them because of past discrimination.

What I have done is select from my own memory, not with the results of any Lexis search, a variety of cases—I made a number of calls around to make sure my recollection was correct—all of which involved awards of more than $1 million in pay and other monetary relief to victims of discrimination, all of them occurring within the 1980's. There are many other cases that I do not have personal knowledge about. This list of cases does not include Federal agencies that have had to spend millions of dollars to correct their system, to come up with new selection devices and that sort of thing.

In *Thompson* v. *Sawyer*, a sex discrimination case against the Government Printing Office, approximately $12 million in backpay and other benefits has already been paid out. On page 10 of the prepared statement there is a breakdown. Title VII backpay awards have amounted to $5 million to date; Equal Pay Act awards, $4 million; backpay pension adjustments correcting the ef-

fects of past discrimination, roughly $1 million; front pay, until vacancies open up so that the women discriminated against can fill the positions they would have had in the absence of discrimination, is running at about $500,000 per year; ongoing pension adjustments are running from $100,000 to $200,000 per year. All told, more than $12 million has already been paid out.

If the Government Printing Office had had the same kinds of affirmative action plans, underutilization analyses, and goals and timetables used by major private employers, and had paid attention to the results, that harm to victims of discrimination would never have occurred and the expense to the taxpayers would never have occurred.

In *Miller* v. *Staats*, a case against the General Accounting Office, in 1982 the Government agreed to a settlement involving $4.2 million in backpay and liquidated frontpay. Again, a reasonable affirmative action plan would have corrected that problem long ago.

In *Chewning* v. *Edwards*, a sex discrimination case against a former unit of the Department of Energy, the Government paid $2,220,000 to the class of professional women—accountants, lawyers, engineers, physicists, who had been discriminated against.

In *Withers* v. *Harris*, a Texas case, race and sex discrimination involving region VI of the Department of Health and Human Services, the Government agreed in 1980 to establish a back pay fund of $3,500,000.

In *Howard* v. *McLucas*, involving Robbins Air Force Base in Macon, GA, the Government agreed last year to pay $3,750,000 in backpay to the black victims of discrimination.

In *Chisholm* v. *U.S. Postal Service*, there have been a series of settlements, the original one involving $1.7 million in backpay for particularly blatant problems with racial discrimination, including supervisors who openly declared that they would never allow blacks to work in first-line supervisory positions. The subsequent settlements total up to some hundreds of thousands of additional dollars, and ongoing frontpay is going to make this again a very expensive case to the Government.

We have been consulted with respect to a case—we cannot identify it further because of confidentiality requirements—but the finishing touches are being put on the settlement right now and that will involve some millions of dollars in backpay with ongoing frontpay obligations on the part of the Government.

Each of those cases involves the needless incurring of liability, because the Government did not have reasonable affirmative action plans, the same kind as used by American business, involving underutilization analyses and the setting of goals and timetables.

The harm in those cases is only partly redressed by those monetary awards, as large as they may seem. In the Federal sector, backpay awards do not include prejudgment interest; they do not include any adjustment for inflation. So there is a major difference between the monetary relief one gets in the private sector under title VII and what one gets in the Federal sector. There are no awards of compensatory or punitive damages in the Federal sector, as there can be in the private sector under 42 U.S.C. Section 1981.

Now, we have some specific suggestions for amendments to H.R. 781. I was glad to see that Representative Collins has incorporated the most important of them. It is one thing to provide that the EEOC may seek relief, but as with any civil rights bill with teeth in it, the question always becomes who will "chew." The importance of a private right of action is that one is not left to the sometimes fickle enforcement urges of a Federal agency in order to see that occur. However, we suggest that if this legislation is to work, there have to be greater incentives to private plaintiffs to sue.

Let me give an example. There is a certain amount of attorneys fees, costs and expenses, that would be involved in any employee or applicant going to court to force an agency to develop an affirmative action plan. By its nature, that plan need not benefit personally the person who brought the lawsuit. They may be entitled to an award of fees if they are successful, but that's it.

What we suggest is there be an additional provision in the legislation such that, if there is an enforcement action—this is a count in the enforcement action—the judge finds that there has been discrimination and orders relief, and also makes the further finding that had the agency had an adequate affirmative action plan and paid attention to it, this relief would not have been incurred, that the plaintiffs in the case be entitled to get at least prejudgment interest, perhaps a greater measure of backpay, like a trebling of backpay, as Chairman Thomas suggested a month ago in hearings before the Subcommittee on Employment and Housing of the House Government Operations Committee. Those kinds of incentives would provide both an incentive for that provision to be enforced in private litigation, and an incentive for Federal agencies to comply with the law.

As to the need for the legislation, we would only point out that in 1972 Congress decreed that there be these plans. Thirteen years have now passed. In the absence of further legislation enforcing that provision, 13 years from now this committee may be holding the same set of hearings and still see no greater progress being made.

Turning to part B of the testimony, the Justice Department said in its prepared statement this morning on page 4 that section 703(j) of title VII, 42 U.S.C. section 2000e–2(j), bars the setting of goals and timetables in Federal employment. Section 703(j) says that no employer shall be required to grant preferential treatment to any one in order to conform to the local labor force.

The Supreme Court addressed that particular argument squarely in *International Brotherhood of Teamsters* v. *United States*, 431 U.S. 324, a 1977 decision. It rejected that argument unanimously. It held that that language is no bar to gauging an employer's actual performance in the personnel field by the local labor force and drawing an inference in discrimination if there is a sharp deficiency in the employment of minorities or women. That is exactly what we're talking about here today with underutilization analyses and setting goals and timetables.

The Justice Department witness mentioned the case against the Federal Trade Commission, *Bachman* v. *Pertschuk*. The Lawyers' Committee, through its Washington office, was involved in the prosecution of that case. The agency was under court-imposed goals

and timetables contained in a settlement, a consent decree, from 1978 until approximately 1984. During those 6 years, the agency substantially met the goals and timetables and, for that reason, they were lifted. However, the court required the agency to continue undergoing self-evaluation, to be regularly meeting with counsel for plaintiffs in the case, and made clear that the court was there to review the agency's continuing progress.

The witness simply may not have known of those particular facts, but it would be terribly incorrect to draw any inference that the judge in that case found that there was no need to comply with goals and timetables because the judge had his own set of goals and timetables and was doing a far more effective ongoing evaluation than the EEOC could possibly do.

The Department of Justice's testimony and the testimony of the other witnesses this afternoon seemed very high-sounding in terms of the unwillingness of these officials to discriminate. Unfortunately, when you fail to take corrective action, when you fail to pay attention to what is being done, you allow lower level officials to discriminate.

I have some particular examples to offer to you from the Department of Justice. I would ask the committee's permission to hold the record open so that within a week to 10 days I can submit a written statement detailing these instances further.

But my information is that some years ago the Department of Justice was forced to make its own administrative finding of class-wide discrimination against women who were lawyers in the Antitrust Division and had to order its own remedy because of that discrimination.

There was a class-wide proceeding against the Federal Bureau of Investigation with respect to discrimination in the hiring of female special agents, and the techniques of harrassment designed to wash them out as fast as possible once some of them had been hired. That was successful in the administrative process and a remedy had to be provided for that.

The Drug Enforcement Administration, which is another component of the Department of Justice, has recently been held by the Federal courts to have engaged in class-wide, nationwide discrimination against black agents. The case is *Seeger* v. *Smith*. The D.C. Circuit decision upholding the findings of liability was handed down last year. It appears at 738 F.2d, 1249. The findings of discrimination that were made by the court included discrimination against blacks in salaries and promotions, in initial grade assignments, in work assignments, in supervisory evaluations, and in the imposition of discipline. Not only was there intentional discrimination found by the court, there also was discrimination in the use of unnecessary criteria that tended to exclude blacks from a better employment situation.

Now, what happened after the trial of that case? The Drug Enforcement Administration immediately tried to take retaliatory action against the senior, highest-ranking black plaintiff in the case, one of the star witnesses at the trial. They tried to demote him, they tried to transfer him. Another small trial was held on a motion for preliminary injuction and Judge Robinson found the agency was deliberately trying to harrass this official because of

his involvement in the lawsuit and granted the preliminary injunction. That was affirmed by the D.C. circuit, 738 F.2d. 1295, and earlier this year the Supreme Court denied certiorari. This record by the Justice Department itself furnishes one of the strongest reasons for the Justice Department's adherence to the law and the development of reasonable affirmative action plans.

Finally, with respect to goals and timetables in the public sector, I would like to draw the committee's attention to what happened earlier this year when the Justice Department sent out letters to 51 cities, counties and States across the country, as to which the Justice Department previously obtained decrees—some of them consent decrees, some litigated after a full trial—requiring them to obey goals and timetables set by the court. The Justice Department said "we have our own personal view of *Stotts* and we want you to join with us in eliminating this relief against you."

One would ordinarily think that a defendent, required by a court order to change its practices and do a variety of things, would leap at the chance to eliminate the court controls over its behavior. What happened was the reverse. Out of 51 agencies, there were initially 3 that decided they would go along with the Justice Department.

Mr. MARTINEZ. Allow me to interrupt you at this point. We have a full committee markup going on right now, and in just a short while they are going to be calling both of us down for that vote. So I would ask you to summarize. The part you are going into now we have covered before. We know all about the 52 and the rejection of all but two of those cities.

Mr. SEYMOUR. That was my final point, sir.

[The prepared statement of Richard Seymour, with attachment, follows:]

PREPARED STATEMENT OF RICHARD T. SEYMOUR, DIRECTOR, EMPLOYMENT DISCRIMINATION PROJECT OF THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

A. INTRODUCTION

Mr. Chairman and Members of the Subcommittee, we appreciate the opportunity to provide testimony here today. As you know, the Lawyers' Committee was founded in 1963, when President Kennedy summoned the leaders of the American Bar to a meeting at the White House. In response to the widespread denial of civil rights to blacks in the South, President Kenndy requested the lawyers present at the meeting to form a new civil rights organization which would provide legal representation to the victims of such discrimination. From 1963 to the present, the Lawyers' Committee and its local offices in Washington, Philadelphia, Boston, Chicago, Jackson, Denver, Los Angeles and San Francisco have represented the interests of minorities and of women in thousands of lawsuits. Many of the nation's leading law firms have joined with us in providing such representation.

The subject of today's hearings is of particular interest to the Lawyers' Committee. On July 25, 1984, William H. Brown III testified on behalf of the Lawyers' Committee at hearings held by the Subcommittee on Government Activities and Transportation of the House Committee on Government Operations. Mr. Brown, as I am sure you are aware, is a former Chairman of the Equal Employment Opportunity Commission during the Nixon Administration, and is currently a partner in the Philadelphia firm of Schnader, Harrison, Segal & Lewis, and is a member of the Board of Trustees of the Lawyers' Committee. His testimony described in detail the nature of the affirmative-action obligations imposed on Federal agencies by statute, and my testimony today will not repeat his points. I ask the Chairman's permission to make his testimony in 1984 a part of this hearing record as well.

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B. THE BASIS FOR REQUIRING FEDERAL AGENCIES TO PREPARE AFFIRMATIVE ACTION PLANS

Section 717(b) of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972,[2] requires each Federal agency to prepare national and regional equal employment opportunity plans in order to "maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment." [3] We suggest that this language requires each Federal agency to develop the kinds of affirmative action plans used by American business, complete with analyses of underutilization and the development of reasonable goals and timetables were significant underutilization has been found.

There can be little question over the meaning of the statutory terms, because their history is clear. Sec. 717 originated in the Senate version of the 1972 amendments to Title VII, and the Senate Committee Report gave several "legislative directions" specifying the manner in which the statutory command should be carried out. For example, the Report stated that the plans to be reviewed by the Commission [4] were to be: [5]

> Developed with full consideration of particular problems and employment opportunity needs of individual minority group populations within each geogrpahic area.

The Committee Report continued with a directive as to analyses of underutilization of minorities: [6]

> . . . [T]he Committee expects the Commission to require that agency plans include specific regional plans for particularly large Federal regional installations and other regional offices with particularly deficient records of progress in equal employment opportunity. . . .
>
> The bill requires the Commission to obtain, on at least a semi-annual basis, minority group employment and such other data as are necessary for effective evaluation by the Commission and the public of each department's, agency's or unit's record of equal employment opportunity achievement . . . .

The Senate Committee also directed the Commission to: [7]

> . . . study and determine the appropriate allocation of personnel and resources committed to carrying out program responsibilities including necessary affirmative action.

In Committee, Senator Cranston had offered the amendment which ultimately became § 717 of the Act. On the floor of the Senate, he later explained what he

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[2] Pub. L. 92-261, 86 Stat. 103, 111-12.

[3] Sec. 717(b) of the Act, 42 U.S.C § 2000e-16(b), as amended, states in part:

"The Equal Employment Opportunity Commission shall—

"(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

"(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semianhual basis) progress reports from each such department, agency, or unit; * * *

"The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment snall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to:

"(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

"(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program. * * *"

[4] The 1972 amendments gave the responsibility of reviewing such plans to the Civil Service Commission. CSC's functions in this area were transferred to the EEOC by Reorganization Plan No. One of 1978, 43 Fed. Reg. 19807 (1978), 7 *U.S. Code Cong. & Admin. News* 9799 (1978).

[5] Senate Committee on Labor and Public Welfare, Report No. 92-415 (92nd Cong., 1st Sess.), at 15.

[6] *Id.* at 15-16.

[7] *Id.* at 17.

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thought his amendment would accomplish. The first two accomplishments he mentioned involved affirmative action: [8]

> My Federal Government EEO amendment included in the committee bill would:
>
> First. Put the Congress on record in favor of maximum affirmative action under Civil Service Commission direction to provide Federal jobs and real advancement opportunities for minority groups in Federal service. . . .
>
> Second. Specifically charge the Civil Service Commission with the responsibility to require all agencies to draw up affirmative action plans and see that they are carried out.

Senator Cranston continued, stating: [9]

> This requires that Federal agencies make a special effort to employ and promote qualified minority perons according to their relative proportions in the population of the area surrounding agency field offices. . . .

At the time of the 1972 amendments, of course, Congress was quite familiar with the types of affirmative action plans required by the Office of Federal Contract Compliance with respect to government contractors under Executive Order 11246. Indeed, § 13 of the 1972 amendments inserted into Title VII a new § 718, which regulated the denial, suspension, and termination of government contracts by OFCC.[10]

On the face of the matter, it seems clear that the kinds of affirmative action programs Congress mandated in 1972 were the same kinds of programs already familiar to it through the government contractor programs under Executive Order 11246. To assert that analyses of underutilization of minorities (including women) and appropriate goals and timetables remedying deficiencies were not part of the Congressional understanding at the time of the 1972 amendments would require a strained and unlikely reading of the legislative language and history.

C. THE USES OF AFFIRMATIVE ACTION PLANS IN THE PRIVATE SECTOR

One of the major uses of affirmative action plans in the private sector is to identify potential problem areas, and to correct them, before they result in substantial discrimination and thus in exposure of the private employer to substantial back pay awards. In the nature of things, it is difficult for a major corporation to know everything which is happening in the personnel operations at each of its often numerous facilities, scatered across the country. In the same manner, it is sometimes difficult for a Federal official to know what each unit of his or her agency is doing with respect to personnel operations.

When a corporation prepares an analysis of underutilization, it can pinpoint locations which are having problems, and can then target those locations for a closer look. It might be that there is a local personnel policy which tends to exclude women or minorities from consideration for hiring or promotions, but which serves on important function. It might be that a local personnel manager is making employment decisions based on racial or sexual stereotypes. It might be that there is a perfectly good explanation for the underutilization, but that the employer can remedy the problem by making an extra, affirmative effort. It might even be that the nature of the problem is such that nothing can be done about the situation. Whatever the facts may be in a particular case, the employer is clearly better off for knowing about the problem and being in a position to take any necessary corrective steps.

A corporate employer will frequently prepare a set of goals and timetables covering each of its potential problem areas, where significant underutilization of women or minorities has been found. Setting an expected rate of progress, and making follow-up inquiries if that rate of progress is not achieved, is a management tool which works as well in the EEO area as it does in other areas of concern to companies: inventory control, cost reduction programs, productivity, etc.

Lawyers' Committee staff have often spoken to groups of corporate managers with interests in these areas, and such managers have often stressed to us the importance of continuing these affirmative action approaches, so that they can make sure that local facilities do not step over the line and begin to go back to the "old ways"

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[8] 118 Cong. Rec., *Legislative History of the Equal Employment Opportunity Act of 1972*, prepared by the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare (92nd Cong., 2nd Sess., 1972) at 1744.

[9] *Id* at 1745.

[10] 86 Stat. 118. The provision is codified at 42 U.S.C. § 2000e–17.

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of making employment decisions based on stereotypes and setting up unnecessary but racially or sexually exclusionary "qualifications". In part, these officials want to make sure that their companies are complying with the law; in part, they want to make sure their companies do not build up substantial exposure to fair employment litigation. From either standpoint, analyses of underutilization of minorities and women, and the setting of reasonable goals and timetables where serious underutilization is found, are seen as indispensable management tools.

D. THE NEED FOR AFFIRMATIVE ACTION PLANS IN FEDERAL AGENCIES

Federal agencies, no less than private corporations, need to guard against the stereotyped decisionmaking, and unnecessary requirements, which tend to exclude minorities and women from consideration. Indeed, we would suggest that Federal agencies have *greater* need for affirmative action plans, because most Federal personnel officials do not have the ingrained sense of accountability to outside agencies which many personnel officials outside the Federal government have had to develop. There is no Office of Federal Contract Compliance Programs looking over the shoulders of Federal managers; no Justice Department suits are filed against Federal agencies because of EEO violations; the EEOC does not even imvestigate complaints of discrimination by Federal agency employers, let alone bring suit against the agencies. When complaints of discrimination are filed, the accused agency is responsible for investigation itself, attempting to conciliate with itself, and even issuing its own decision in the case against it. The EEOC has only an appellate authority.

Moreover, the track record of private enforcement litigation against the Federal government indicates that the law—and the taxpayers—would be far better served by the kind of ongoing monitoring embodied in the use of affirmative-action underutilization analyses and reasonable goals and timetables where significant underutilization is found:

(a) In *Thompson* v. *Sawyer*, 678 F.2d 257 (D.C. Cir., 1982), a sex discrimination case against the Government Printing Office in which the court found classwide violations of Title VII and of the Equal Pay Act, the government has to date paid out to victims an estimated $12 million, broken down as follows:

	Approximately
Title VII Back Pay	$5,000,000
Equal Pay Act Back Pay	4,000,000
Back pay pension adjustments [1]	1,000,000
Front pay (including third year, which either has been paid or is about to be paid) [2]	1,500,000
Ongoing pension adjustments [3]	300,000 to 600,000

[1] Back pay is not limited to paycheck wages, but also extends to compensation for loss of benefits arising because of the discrimination. Thus, an employee whose wages were artificially lowered because of discrimination will have a lowered pension entitlement because of the same discrimination, and the pension benefits must also be adjusted to make the employee whole.

[2] "Front pay" compensates a victim of discrimination who has to wait for another vacancy before he or she can be hired or promoted into the job originally denied him or her because of discrimination. Under Title VII, the courts do not allow "bumping" of incumbent employees to make room for the victims of discrimination.

In *Thompson*, front pay is being paid periodically by the government, at a rate of approximately $500,000 a year.

[3] Ongoing pension adjustments because of past discrimination are costing the government an estimated $100,000 to $200,000 a year.

When all the relief has been paid, it may well come out somewhere between $15 million and $20 million. *If the GPO had had the kind of affirmative action plan used by major corporate employers and had been forced to pay attention to it,*[14] *we believe it could have avoided such discrimination, and the taxpayers would have been spared this expense.*

(b) In *Miller* v. *Staats* (D.D.C.), a racial discrimination case against the General Accounting Office, the government agreed to a settlement in 1982, in which it paid $4.2 million in back pay and liquidated front pay. Again, a reasonable

[14] In *Thompson*, the agency chose to ignore findings by the Civil Service Commission that certain traditionally-female jobs were paid at too low a rate, in comparison with traditionally-male jobs. A lawsuit was then required, to accomplish what should have been accomplished voluntarily. Had the agency taken timely action to remedy the problem, the plaintiffs might never have decided to bring suit.

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affirmative action plan would have revealed the problem long ago, and would have forced GAO to take corrective action.

(c) In *Chewning* v. *Edwards*, C.A. No. 76-0334 (D.D.C.), a sex discrimination case against a former unit of the Department of Energy, the government conceded to the court that it had no defense to plaintiffs' motion for summary judgment on the issue of discrimination against the class of female professional employees. The government ultimately entered in 1982 into a consent decree providing for the payment of $2,220,000 in back way. Once again, any reasonable affirmative-action plan would have revealed the extraordinary patterns of restriction of women on which the prosecution of the case was based, and timely action would have spared both the harm to the victims and the expense to the taxpayer.

(d) In *Withers* v. *Harris*, C.A. No. S-77-3-CA (E.D.Tex.), a racial and sexual discrimination case against Region VI of the Department of Health and Human Services, the government agreed in 1980 to establish a back pay fund of $3,500,000 for blacks and women affected by discrimination. Our comments are the same with respect to the effect a reasonable affirmative action plan would have had.

(e) In *Howard* v. *McLucas*, C.A. No. 75-168-MAC (M.D.Ga.), a racial discrimination case against Robbins AFB in Macon, the government agreed in 1984 to pay $3,750,000 in back pay to the victims of its discrimination. Again, a good AAP would have prevented both the harm to black employees and the exposure to the government.

(f) In *Chisolm* v. *U.S. Postal Service*, 665 F.2d 482 (4th Cir., 1981), a case involving particularly blatant forms of classwide racial discrimination against black postal employees in the Charlotte, North Carolina post office, the court of appeals affirmed the district court's findings of classwide discrimination, and the government subsequently agreed in 1983 to pay $1.7 million in back pay for some claims. Subsequent settlements of remaining claims have added some hundreds of thousands of dollars (estimated) to the total. Front pay will involve further substantial sums. It is precisely in these sorts of situations that underutilization analyses and a reasonable system of goals and timetables are most useful, in giving higher levels of management the information allowing them to spot the fact that a bigot is in charge of a facility, and to take corrective action.

(g) In another case which we cannot further identify at this time because of confidentiality requirements, the finishing touches are being put on a settlement of some millions of dollars, after findings of classwide racial discrimination have been entered.

Each of the above cases is fairly recent, involving the payment in the 1980's of sums of the more than a million dollars in each case to victims of the government's racial and sexual discrimination. Nor is the list complete; it includes only cases which I personally knew to exist prior to the preparation of this testimony and does not include any additional cases which might be shown by a LEXIS search. It does not even include the costs of implementing injunctive relief, which in some cases is estimated to run into the millions, or tens of millions, of dollars. Nor does it include cases now in the pipeline, in which awards in excess of a million dollars will ultimately be made.

The harm done in these cases is only incompletely redressed by the monetary relief; back pay awards against the Federal government do not even include prejudgment interest, which is a standard supplemental remedy in cases against all other employers.

E. THE NEED FOR PASSAGE OF H.R. 781

The real tragedy in these cases is that all of the harm partially redressed by these awards was identifiable at an early stage, could have been corrected at an early stage, if the agencies involved had just elected to follow the law and develop the same kinds of affirmative action plans and monitoring efforts which have become second nature to American business. The continuing opposition of many Federal officials to such a sensible step is difficult to understand.[12]

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[12] We understand that the Justice Department's overbroad reading of the Supreme Court's decision in *Firefighters Local Union No. 1784* v. *Stotts*, 104 S.Ct. 2576 (1984), may have misled some of these officials into thinking that the requirements of § 717(b) of the Civil Rights Act of 1964 can safely be ignored. Pages 10-29 of the testimony provided by the Lawyers' Committee to this Subcommittee on July 18, 1985 discusses that opinion and the Justice Department's mis-

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We support H.R. 781 and the limited relief that it offers. We suggest, however, that it is not enough to pass a statute with teeth in it. The question remains whether anyone will chew. The recent track record of the EEOC, and the policy statements of its Chairman and some of its Commissioners and other officials, suggest that any new powers conferred on the EEOC will languish for lack of use.

H.R. 781 will be far more workable if the minorities and women with a personal stake in its sucess are given a statutory right to sue to enforce its provisions (with attorneys' fees awardable in the event of success), so that they, too, can chew.

Similarly, private plaintiffs should be provided with incentives for enforcing the obligation to prepare adequate affirmative action plans comparable to those used by private industry, in the form of relief going beyond an award of back pay. For example, if the court were to find both a violation of an antidiscrimination law and that the violation could have been identified and corrected through preparation and review of a proper affirmative action plan, the Title VII remedy or Equal Pay Act remedy should be expanded to include prejudgment interest, a longer period of limitations, or a larger measure of monetary relief (compensatory damages, punitive damages, trebling of the back pay award, etc.). We urge this Subcommittee to include such amendments.

Difficult as it may be to understand the opposition of some of the officials in this Administration to the traditional means used by American business to identify problem areas and to resolve them, it is nonetheless necessary to recognize the existence of such opposition, and to take effective action to bring it to an end.

Thirteen years have passed since the 1972 amendments to title VII went into effect, and it is high time that the government begin to follow the law. If Congress does not pass legislation providing an effective prod to the government, many Federal agencies will continue to drag their feet for another thirteen years. We urge that H.R. 781 be strengthened and passed.

TESTIMONY BEFORE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION

Madam Chairwoman Collins and Members of the Subcommittee, I am pleased to appear before you this afternoon on behalf of the Lawyers Committee for Civil Rights Under the Law to comment on the refusal of the National Endowment for the Humanities to set goals and timetables for the employment of women and minorities at that agency.

I am William H. Brown, III, a partner in the Philadelphia law firm of Schnader, Harrison, Segal & Lewis. I have a significant interest in this controversy having served as the Chairman of the Equal Employment Opportunity Commission from April of 1969 until December of 1973. Of equal if not greater importance, I and the members of the Board of Trustees of the Lawyers Committee for Civil Rights Under Law are dedicated to equal employment opportunity and the vigorous enforcement of our laws protecting the rights of minorities and women.

President John F. Kennedy in June of 1963, appalled at the lack of respect for the Constitution as interpreted by the courts, met with leading American lawyers at the White House and appealed to them to support the struggle for equal opportunities for this country's black citizens. The Chairman of our Firm, Bernard G. Segal, and Harrison Tweed, organized a committee of lawyers, committed to the ideal that our constitutional guarantees had to be protected and enforced. They became the first co-chairman of the Lawyers Committee, an organization which has been in the forefront of the fight for civil rights under law for more than 20 years.

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reading of it. To date, every court of appeals to consider the issue has rejected the Justice Department's position: this includes the First, Second, Third, Sixth, Seventh, Ninth, and Eleventh Circuits. I ask the Subcommittee to consider the July 18 statement as incorporated herein by reference.

In addition to the cases cited in the July 18 prepared statement, I would like to direct the attention of this Subcommittee to the following additinal authorities: *Commonwealth of Pennsylvania* v. *Local Union 542, Int'l Union of Operating Engineers*, ——— F.2d ——— (No. 84-1614, 3rd Cir., July 17, 1985) (rejecting a broad view of *Stotts* in a Title VII enforcement case); *Palmer* v. *District Board of Trustees*, 748 F.2d 595 (11th Cir., 1984) (upholding a public employer's affirmative action plan); *Johnson* v. *Transportation Agency, Santa Clara County*, 748 F.2d 1308 (9th Cir., 1984) (same); *Grann* v. *City of Madison*, 738 F.2d 786, 795 n. 5 (7th Cir.), *cert. den.*, 105 S.Ct. 296 (1984) (same); *Bushey* v. *New York State Civil Service Comm'n*, 733 F.2d 202 (2nd Cir., 1984), *cert. den.*, 53 U.S. *Law Week* 3739 (1985) (same); *Wygant* v. *Jackson Board of Educ.*, 746 F.2d 1152 (6th Cir., 1984), *cert. granted*, 53 U.S. *Law Week* 3477 (1985) (same). The forthcoming Supreme Court decision in *Wygant* should lay this issue to rest once and for all.

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The refusal of the Chairman of the National Endowment for the Humanities to comply with Section 717 of Title VII of the Civil Rights Act of 1964, as amended, and with Executive Order 11478 as well as with the directives of the Office of Personnel Management to identify under-representation of minorities and women and to establish goals and timetables where such under-representation exists is inexcusable and should not be tolerated. All of us who have served in the government have taken an oath of office to uphold and defend the Constitution of the United States as well as the laws of the country. No where has it ever been suggested that in accepting high government positions and repeating the oath of office we would be allowed the discretion of enforcing and upholding only those laws with which we agree. The decision in this case of the Chairman of the National Endowment for the Humanities to separate his agency from more than one hundred others who have obeyed the laws and the regulations of EEOC and the Office of Personnel Management makes one wonder whether he believes this is a nation of laws or a nation of individuals.

Chairman Bennett, on April 15, 1984, in submitting his agency's 18th Annual Report to the President, stated:

> . . . the humanities are crucial to the vitality of our nation's educational and cultural life and to the maintenance of our civilization.

If government has the responsibility to make certain that the vitality of our nation's education and cultural life is maintained, how much greater then is its responsibility to protect the individual? In recent years much has been said about the government's responsibility for the protection of our environment. No one denies that the government which represents its citizens has the responsibility to protect its people from the pollution of their environment. No one would deny that the government has the responsibility to protect our lakes, our rivers and our trees, but who can deny the greater responsibility of government to protect its people. A lake, if left alone, will eventually purge itself of pollution and the fish and the wildlife will return. Individuals, if misused, cannot purge themselves of the pollutants of discrimination, poverty and bitterness. They can only pass it on to their sons and daughters.

It is ironic that the National Endowment for the Humanities was created in the same year as Title VII of The Civil Rights Act of 1964 became effective. Minority group members and women are still excluded from certain jobs and restricted to others throughout business, industry and the Federal Government. Their frustration and bitterness will not be mitigated by the token advancement of a few. If minorities and women are ever to take their rightful place in our society and make their full contribution, affirmative action programs must be established to recruit them as candidates for jobs and to upgrade present minority and female employees so that they can realize their full potential. Paper pledges and future promises are not enough. Vigorous aggressive steps must be taken within each agency to eliminate the effects of a century's discrimination.

Down through the years, discrimination has spread like a cancer, infecting every aspect of life in America. There are many of us who have been reluctant to recognize the symptoms, much less treat the disease. Instead of responding to the early warning signs, many have clung to the hope that the disease would cure itself without too much effort on their part.

Those of us who have tried to cure the disease have only been able to localize the infection. We have long since passed the point where all American employers, both private and public, must respond with massive doses of honest effort and commitment instead of more and more paper promises. And the effort and commitment must begin with the individual. Those persons responsible for implementing the policies on equal employment opportunity within a federal agency or within the corporations of our country must give more than lip service to the policies. In the words of Thomas Carlyse—"Our grand business is not to see what lies dimly at a distance, but to do what lies clearly at hand."

The National Endowment for the Humanities' Chairman, in his letter to the Chairman of the Equal Employment Opportunity Commission dated January 16, 1984, states that his agency will neither favor nor slight anyone because of race, color, national origin, religion or gender. He goes on to state that, "As you know, there has been no finding whatsoever of discrimination by this agency." His refusal to comply with Chairman Thomas' request is based on his belief that there is no proper and improper mixing of races, creeds, colors, or sexes in the workplaces of this country. The laws of the Uniterd States as interpreted by the Federal courts including the Supreme Court of the United States to the contrary notwithstanding.

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The work force statistics submitted by the National Endowment for the Humanities for fiscal year 1983 clearly indicated the need for that agency to reexamine its position. Of the 242 persons employed during that year, 156 were women, or 64%. Sixty-seven of the employees were black, representing 28% of the work force. Three employees were Hispanic or one-tenth of one percent of all employees were of Hispanic origin.

Let's remember these figures. Sixty-four percent of the employees at the agency are female and 35% are male. Seventy-two percent of the employees at the agency are white and 28% black. In this agency which has no need to identify under-utilization and which professes to believe that there is no proper mix of males and females, 88% of all of the women in the agency are at grades one to 12. In fact, 57% of all the women in the agency are at grade 8 and below while only 16% of the males are in these grades.

Seventy-three percent of all the blacks in the agency are at grades 8 and below, while only 31 percent of the whites are in these grades. In the professional ranks, 89 percent of all the professionals are white while less than 1 percent are black. Forty-four percent of all the whites in the agency are professional while only 10 percent of all the blacks in the agency are professional. Need one say more.

The definition of the term "humanities" as defined in the National Foundation on the Arts and the Humanities Act of 1965 indicates that the term includes "the study of languages, both modern and classical . . ." It is not unreasonable to assume that an agency whose charter includes the study of language would be able to distinguish the meaning of the word "quota" from the meaning of the word "goal." Funk and Wagnalls Standard College Dictionary defines quota as "A proportional part or share required from each person, group, state, etc., for making up a certain number or quantity." The same dictionary defines the word goal as "Something towards which an effort or movement is directed." To require any employer to make an effort to include more minorities and more women in their work force, in other than traditional positions, should not impose a burden on anyone. The requirement to "make a good faith effort" to hire and upgrade minorities and women as all government contractors are required to do under Executive Order 11246, cannot be viewed by any rational thinking individual as an attempt to force employers to employ someone who is not qualified or someone merely because they happen to be a woman or a member of a minority group.

A substantial number of institutions receiving grants from the National Endowment for the Humanities are government contractors subject to Executive Order 11246 issued September 24, 1965, and the regulations articulated by the Department of Labor's Office of Federal Contract Compliance Programs. These regulations are spelled out in Title 41 C.F.R. Section 60 et seq. Under the Executive Order and the implementing regulations, those institutions receiving funds from NEH and who meet the criteria established for government contractors, are required to prepare affirmative action programs on an annual basis. The affirmative action programs must contain a utilization analysis which identifies all major job groups where women or minorities are under-utilized. "Under-utilization" is defined under revised Order Number 4 (41 C.F.R. Section 60-2.1)

> . . . As having fewer minorities or women in a particular job group than would reasonably be expected by their availability.

Section 2.10 of Order Number 4 implementing Executive Order 11246 states that "An affirmative action program is a set of specific and results-oriented procedures to which a contractor commits himself to apply every good faith effort." Revised Order Number 4 goes on the require that the contractor establish goals and timetables which reasonably could be expected from the contractor putting forth every good faith effort to make its overall affirmative action program work. The Order further states in setting the goals, the contractor should consider the eight factors set forth at Section 60-2.11.

Section 60-2.12 of Revised Order Number 4 sets out specifics for establishing goals and timetables as follows:

> (a) * * *
>
> (b) Involve personnel relations staff, department and division heads, and local and unit managers in the goal-setting process.
>
> (c) Goals should be significant, measurable and attainable.
>
> (d) Goals should be specific for planned results, with timetables for completion.
>
> (e) Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.

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(f) In establishing timetables to meet goals and commitments, the contractor will consider the anticipated expansion, contraction, and turnover of and in the workforce.

(g) Goals, timetables, and affirmative action commitments must be designed to correct any identifiable deficiencies.

(h) Where the deficiencies exist and where numbers of percentages are relevant in developing corrective action, the contractor shall establish and set forth specific goals and timetables separately for minorities and women.

(i) Such goals and timetables, with supporting data and the analysis thereof, shall be a part of the contractor's written affirmative action program and shall be maintained at each establishment of a contractor.

(j) * * *

(k) Where the contractor has not established a goal, its written affirmative action program must specifically analyze each of the factors listed in Section 60-2.11 and must detail its reason for a lack of a goal . . .

Section 60-2.30 provides as follows:

USE OF GOALS

The purpose of a contractor's establishment and use of goals is to insure that it meet its affirmative action obligation. It is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national origin.

The chairman of the National Endowment for the Humanities as a contracting agency of the federal government is obligated to enforce the Executive Order as it applies to recipients of its funds. It is not reasonable to assume that the chairman of NEH is likely to require or indeed even be concerned with the affirmative action programs of the recipients of its funds when the chairman has refused to allow his own agency to submit information identifying underutilization of women and minorities and refuses to estabish goals and timetables to insure that these groups are properly represented within his own agency. The old adage of the fox guarding the hen house comes quickly to mind.

A strong case can be made that monies received from the National Endowment for the Humanties are in reality "government contracts." The definition of "government contract" as set forth at Section 60-1.3 of 21 C.F.R. states that it means—

Any agreement or modification thereof between any contracting agency and any person for the furnishing of . . . services. The term 'services', as used in this section includes, but is not limited to the following services: . . . research, . . .

The National Foundation on the Arts and Humanties Act of 1965 clearly states that one of the purposes for the establishment of the Foundation was to "initiate and support research and programs to strengthen the research and teaching potential of the United States in the humanities by making arrangements (including contracts, grants, loans, and other forms of assistance) with individuals or groups to support such activity."

Certainly an argument could be made supporting the proposition that the institutions receiving funds from the National Endowment for the Humanities are not considered to be government contractors subject to Executive Order 11246. However, they clearly are subject to Title VI of the Civil Rights Act of 1964 which prohibits discrimination in Federally assisted programs on the ground of race, color or national origin and of Title IX of the Education Amendments of 1972 which prohibits discrimination on the basis of sex in educational programs or activities receiving Federal financial assistance. It is also important to note that many of these institutions *are* government contractors by reason of funds received as a result of contracting with other federal agencies.

The position of the Chairman of the National Endowment for the Humanities at its worse, will weaken the Federal government's efforts to require affirmative action programs containing the identification of under-utilization of minorities and women and the establishment of goals and timetables to correct such under-utilization. At its best, the action of the Chairman sends a conflicting signal to the private sector. Institutions and coroprations across the country will see this action of NEH as indicating one standard for the private sector and another standard for the Federal government.

As the head of the Equal Employment Opportunity Commission, I traveled throughout the country, speaking to various employer groups, labor unions and major corporations. Inevitably, I was always asked why is it that the government

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requires us to do so much in the area of equal employment opportunity and affirmative action and requires so little of itself. For too long, rather than setting the pace, the federal government has been content to lag behind in the race for equal employment while at the same time insisting that those in the private sector do more. The government is meant to be, and is, the servant of the people. The executive branch was established to perform certain duties at the behest of the people as expressed through their elected representatives. The people, through their representatives, have decided that discrimination in employment is illegal and has charged the Equal Employment Opportunity Commission with enforecment of the law. Who can deny that laws which are flagrantly violated or poorly enforced weakens the entire fabric of our society and our system of justice. Neither the National Endowment for the Humanities nor its chairman can be allowed to ignore their legal obligations to identify the under-utilization of minorities and women and to set goals and timetables to correct what is clearly a lack of sensitivity to the needs and aspirations of millions of minorities and women. The obligation of every government official is to obey the law whether they agree with it or not.

Madam Chairwoman, I am appreciative of the opportunity to express my views on this subject. I am happy to answer any question that you or any member of the Sub-Committee may have.

Thank you.

Mr. MARTINEZ. Thank you.

Mr. Hayes.

Mr. HAYES. I am going to be very brief. I just want to thank the two witnesses for what has been very good testimony.

Dr. Flemming, I was on the subcommittee before which you appeared previously, and you, as former Secretary of Health, Education and Welfare, certainly should understand the purview of this committee and where we're going. You have said quite clearly—and correct me if I'm wrong—that the department heads are in violation of the law; is that right?

Dr. FLEMMING. My feeling is that the department heads that refuse to comply with the EEOC regulation calling for an affirmative action plan which will include goals and timetables are in violation of the law, because that regulation has been issued under the direction of the Congress and Congress has said that when the regulation is issued, then the heads of the departments and agencies are to comply.

You had two in front of you today who said they weren't going to comply, and a third that apparently is about to arrive at that particular conclusion. To me, that is an indefensible position for the head of a department or agency to take, and I still insist it is a violation of the oath of office that the head of that department or agency has taken.

Mr. HAYES. Both of you have expressed agreement with H.R. 781 and its enactment into law as a measure in trying to correct what is wrong. It seems pure folly to depend upon the Justice Department—it's tantamount to having the fox guard the chicken coop by depending on them to enforce a law which they don't agree with; is that right?

Dr. FLEMMING. I welcome the thrust of 781. I appreciate the comments my colleague just made. I must say I am one who respects and feels indebted to the Lawyers' Committee for Civil Rights Under Law, for all that they have done in this area and many other areas. They are great.

Mr. HAYES. We only need to glance back just a few months when we talk about people being judged as equals. You remember just a few months ago when Jesse Jackson ran for President. There was

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no question about the constant reminder of our percentage of the population at that time, that even blacks saw the folly of his candidacy just based on that figure and fact alone. Blacks only represent 12 percent of the population. But certainly we don't have to wait until everyone is accepted equally to effectuate a change. It is just pure folly, in my opinion.

Mr. MARTINEZ. I will also be brief. We don't know when we're going to get called here.

Dr. Flemming, you referred to the statements of the three previous witnesses, and especially I'm going to refer to the statements of John Agresto, because what I think he said—and this is my interpretation of what he said—he said he would resign if he was forced to comply with the law. Yet emphatically throughout the testimony both he and Mr. Willkie denied they were in violation of the law.

I think what Mr. Seymour has said, quoting from cases, is that they are in violation of the law. And I think you said it, too, in part of your testimony, when you said "In addition, the Congress has stated the heads of departments and agencies and other units shall comply with these rules and regulations." If the Congress said it, and it is the law that was passed in the Civil Rights Act of 1964, then that is the law. But they choose to look at it differently.

It seems to me—and I'm going to ask you to comment on this—we now have another "Supreme Court" besides the Supreme Court, or a court somewhere between the appellate courts and the Supreme Court. This court lies in the office of the Attorney General in the Justice Department, and he will now only interpret the law. I thought under our system of law only the Supreme Court was supposed to do that.

Would you comment on that?

Dr. FLEMMING. As I indicated earlier, I am very much disturbed by this particular development. I noted, as you said, when kind of forced to defend their position, two of the witnesses relied on the position taken by the Attorney General, that, after all, he's the chief law enforcement officer of the Government and he feels the EEOC had exceeded their authority.

But there is nothing in that law that gives him the right to set aside a decision on the part of the Equal Employment Opportunity Commission. I mean, it has a degree of independence that has been accorded by the Congress and the Congress said to it "You issue the rules and regulations." Then it said to the Attorney General and to the heads of all the other departments and agencies, "You follow those rules and regulations." The Congress didn't grant a right of appeal to the Attorney General. You said to the department heads and agencies, these rules and regulations will be followed.

May I also say this—and I certainly agree with the position taken here—I feel the position taken by the Attorney General is an untennable position when he says the EEOC has exceeded their authority. It is clear that they haven't exceeded their authority. It is clear that they acted in conformity with the intent of the Congress. I appreciate your emphasis on the amendments to title VII, and you can go over to the Civil Service Reform Act and there's a reference in there to affirmative action plans. It is written right into

the law. Clearly the Congress had this in mind, and when EEOC issued this regulation, it seems to me they were on very solid grounds. But they did it, and they did it in conformity with the intent of Congress.

Under our system of government, I feel that a person who is the head of agency and has taken the oath of office to uphold the law of the land has no alternative other than to follow that regulation. I hope this Committee will stay with that fundamental issue. That is what I like about this proposed legislation. It is designed to get at that fundamental issue. What do you do with the head of a department who just says, "Look, my views are different than the law and I'm going to follow my views, not the law." How do we get at the head of a department or agency that takes that particular position?

I run into it in another area over in the disability cases, where they have developed a doctrine of non-acquiescence in the decisions of circuit courts of appeal. I will be testifying on that on Thursday of this week before a subcommittee of the Judiciary Committee. To me, this goes to the heart of our system of government.

Mr. MARTINEZ. I agree with you.

Mr. Seymour, repeatedly in this hearing and other hearings we have heard people hang their hat on the Stotts decision that Mr. Flemming referred to in his testimony—I guess one can hang their hat on anything. Their individuals interpret the decision as meaning that somehow said race, color, gender, and ethnicity related remedies, are not legal remedies. I think Mr. Flemming states it adequately, that what it was referring to was a seniority situation.

Can you comment on that?

Mr. SEYMOUR. I agree with what Mr. Flemming said, and I would point out that in the *Stotts* decision itself, virtually every Justice agreed with the proposition that you can have race- and gender-conscious relief benefiting people never shown to have been victims of discrimination, if the facts justify it. Discrimination in the seniority system was the example that most of them chose.

There are six circuit courts of appeals which after *Stotts* have upheld either voluntary affirmative action plans or have upheld the court imposition of goals and timetables. Since the testimony last week, we have found out the third circuit in the Commonwealth of Pennsylvania has just joined the throng. So far the first circuit, the second circuit, the third circuit, the sixth circuit, the seventh circuit, the ninth circuit, and the eleventh circuit have all rejected the Justice Department's view of *Stotts*.

At some point the Attorney General should start paying attention to the law laid down by these courts and change his position. He can always seek Supreme Court review in an appropriate vehicle, but there is no point in throwing the operations of the Government and expectations in the country into turmoil when the law that is developing is so clearly against him.

Mr. MARTINEZ. Thank you.

I thank you both for appearing before us and giving us the benefit of your expertise and knowledge. We sincerely appreciate it.

Dr. FLEMMING. It is nice to be with you.

Mr. SEYMOUR. Thank you.

Mr. MARTINEZ. Our next panel consists of Marie Argana, president of Federally Employed Women, and James Rogers, national president of Blacks in Government. Would you please come forward.

Miss Argana, would you like to begin?

STATEMENTS OF MARIE ARGANA, PRESIDENT, FEDERALLY EMPLOYED WOMEN; AND JAMES E. ROGERS, JR., NATIONAL PRESIDENT, BLACKS IN GOVERNMENT, A PANEL

Miss ARGANA. Thank you, Mr. Chairman, for inviting Federally Employed Women to testify before your committee today. Federally Employed Women is an international membership organization representing women in the Federal Government throughout the United States and foreign countries. FEW is a private, nonprofit, nonpartisan organization that was founded in 1968 to advocate equal opportunity and foster full potential for working women in the Federal sector.

We are also testifying today on behalf of the Federally Employed Women Legal and Education Fund, a nonprofit corporation dedicated to the eradication of discrimination in Federal employment for all Federal workers. The fund is our sister organization and works through legal, educational, and research activities to bring about true equality for Federal workers.

As an organization committed to equal opportunity for all in Federal employment, FEW strongly supports the implementation and enforcement of affirmative action plans in order to redress the persistent discrimination within the workplace. Without results-oriented affirmative action policies, women and minorities would find their job and promotional opportunities extremely limited.

Although a myriad of laws and regulations govern antidiscrimination and affirmative action practices in the Federal service, these laws and regulations would be useless without strict enforcement. Since its inception, affirmative action has been criticized, questioned, and ignored. Much of this controversy stems from a lack of understanding of exactly what affirmative action is intended to accomplish. Affirmative action is not intended to compel employers to hire unqualified persons, nor is it a requirement imposed on employers regardless of their past history. It is simply a remedy to redress the continuing effects of past discrimination. Affirmative action is any race- or sex-conscious measure beyond passive restraint of discriminatory actions which is supposed to correct or compensate for past and present discrimination.

Goals and timetables evolved when it became obvious that the best intentions by the public and private sector yielded little, if any, positive results. Goals and timetables were designed to pout results-oriented tools into the program. Furthermore, the use of numerical formulae forced employers to keep a current data base on the employment of women and minorities in various occupations across grade and salary levels. Such statistical analyses are needed to plot progress and plan new initiatives, as well as provide critical information when legal action is initiated.

The deep-rooted perserverance of sex and race discrimination and resulting occupational segregation and wage discrimination is

still prevalent in the Federal Government. Additional remedies as well as strict enforcement of existing remedies are needed to increase promotional opportunities for women and minorities into the higher grades. There they can have a positive impact upon public policy, helping our Government decisionmakers by reflecting the plurality of viewpoints present in our population at large.

The current erosion of civil rights laws in our country is proceeding at an alarming rate. The Department of Justice, the U.S. Commission on Civil Rights, and the EEOC have publicly stated their opposition to results-oriented measures to ease sex discrimination in the Federal labor force. The very agencies charged with ensuring equal opportunities for all have denied their mandate.

The results of these actions can already be seen in the Federal work force. Although minorities and women have continued to make minimal gains in the Federal career ladder, their progress has slowed remarkably in the past several years.

The lack of progress for women and minorities is partially due to the erosion of strong affirmative action programs. Another causal factor is the recent reductions in force that have disproportionately impacted women and minorities. The gains to middle management by women and minorities are relatively recent, so under the policy of last hired, first fired, women and minorities are adversely affected. Thus, not only have we not reached the top, we are losing ground in the mid-levels.

In preparation for this testimony, FEW conducted an informal survey among members who are employed in EEO capacities in both Defense and non-Defense agencies. Although the comments regarding current EEO practices were varied, an underlying theme recurred. All survey participants noted that the laws needed to promote affirmative action and curb discrimination are present, but that the implementation and enforcement of those laws range from limited to nonexistent. It became evident during the course of the survey that the progress of affirmative action in any agency or department is dependent upon the individual management in that agency or department. Where commitment to EEO exists, affirmative action plans are implemented. Where EEO is nonexistent, no affirmative action is evident. Furthermore, no recrimination is evident when agencies fail to abide by EEO guidelines.

Another complaint that surfaced several times was the attempt to deemphasize EEO programs by integrating them into the personnel offices. The EEO function has traditionally been under the supervision of the Secretary of the agency. Several agencies have, however, downgraded this function to other levels. This action not only deemphasizes the role of EEO in an agency, but places burdens on EEO specialists who must also act in a personnel capacity. In related incidents, Federal women's program managers who oversee EEO and affirmative action functions for women, are often assigned their Federal women's program responsibilities as a collateral duty. This means they are performing another job in addition to their EEO responsibilities.

Several survey participants reported cases where a male was assigned to an office where a vacancy was anticipated. As soon as the vacancy was realized, the man would be offered the higher grade position. This practice of "lining up men" for top management po-

sitions is apparently fairly common in much of the Federal Government and negates much of the progress that affirmative action could achieve if the position were opened to competition and the need for women and minorities in higher grade emphasized.

Disillusionment with EEO laws and affirmative action programs in the Federal sector is rampant. Agency heads are not held accountable for their lack of actions in fostering EEO in the workplace. Several people cited some progress in the hiring of women and minorities. But they emphasize that the job of promoting women and minorities had just begun. Strong enforcement of current laws is necessary for women and minorities to continue to make inroads in Federal employment.

The courts have long noted that one purpose of EEO laws is to ensure that everyone has a chance to gain his or her rightful place at work. We still have a long way to go and without making affirmative action a priority, we won't get there.

The lack of enforcement of EEO laws and affirmative action is evident by the increased number of complaints being filed. In the fiscal year 1982 EEOC report on precomplaint and complaint processing, it is noted that the top two categories of complaints are race-black and sex-female with 14 percent of the complaints based on sex, or 2,987 allegations of sex discrimination, and 21.3 percent of the complaints based on race, or 4,586 allegations of race discrimination. In the same report for fiscal year 1983, the allegations of discrimination increased for totals of 22.7 percent based on race—there were 5,629 allegations—and 14.2 percent based on sex—there were 3,520 allegations.

Well implemented and effective affirmative action plans afford many benefits. In addition to the obvious increase in the number of women and minorities in the Federal service, the conscience of the Federal Government as an equal employment opportunity employer is raised. Affirmative action utilizes the talents of many individuals who would otherwise be stifled by bias. Opening and increasing career opportunities expands the purchasing power of women and minorities and reduces the burden on taxpayers to support those unable to support themselves. In addition, affirmative action promotes fair and rational employment policies and better decisionmaking through the presence of diverse viewpoints at all levels of the workplace.

We would like to make a couple of recommendations.

FEW recommends that the Federal Government increase its concentration on race- and sex-conscious tools to achieve a well-integrated work force and continue to use statistical measures of compliance with nondiscrimination such as goals and timetables. We also recommend that the full range of remedies and sanctions be available, including back pay and debarment, as an incentive to compliance. We would like to see the reestablishment of strong enforcement of affirmative action programs within the Federal agencies as well as retain plans for agencies and Federal contractors to utilize goals and timetables in affirmative action plans.

We commend Representative Cardiss Collins for introducing H.R. 781. The Equal Employment Opportunity Commission Amendments of 1985 provides procedures to ensure compliance with Federal EEO laws. We urge this Committee to pass H.R. 781.

Affirmative action is a necessary tool for women and minorities to reach their full potential in the public sector as well as the private sector. A society which affords fair treatment to women and minorities is a stronger society by far than one which excludes them from full participation.

Thank you for asking FEW to testify before the Committee today.

[The prepared statement of Marie Argana follows:]

PREPARED STATEMENT OF MARIE ARGANA ON BEHALF OF FEDERALLY EMPLOYED WOMEN

Chairperson Martinez, thank you for inviting Federally Employed Women [FEW] to testify before your committee today. Federally Employed Women is an international membership organization representing women in the Federal Government throughout the United States and foreign countries. FEW is a private, non-profit, non-partisan organization that was found in 1968 to advocate equal opportunity and foster full potential for working women in the Federal sector.

We are also testifying on behalf of Federally Employed Women Legal and Education Fund [FEW-LEF], a non-profit corporation dedicated to the eradication of discrimination in Federal employment for all Federal workers. The fund is our sister organization and works through legal, educational, and research activities to bring about true equal opportunity for Federal workers.

As an organization committed to equal opportunity for all in Federal employment, FEW strongly supports the implementation and enforcement of affirmative action plans in order to redress the persistent discrimination within the workplace. Without results-oriented affirmative action policies, women and minorities would find their job and promotional opportunities extremely limited.

ORIGINS OF EEO IN THE FEDERAL SECTOR

Before proceeding to present day EEO practices and affirmative action implementation, it is necessary to review the evolution of the current laws and regulations. When the Civil Rights Act was passed in 1964, title VII of the act contained a broad-based statute prohibiting discrimination. The Civil Rights Act barred discrimination in all practices on the basis of sex, race, color, religion, and national origin. It also created the Equal Employment Opportunity Commission [EEOC] to administer and enforce this law. After passage of the Civil Rights Act, several executive orders [E.O.] were issued that further strengthened anti-discrimination laws. E.O. 11246, a product of the Johnson administration, set EEO standards for any contractor who did business with the Federal Government. E.O. 11375 granted sex equity the same status as other forms of discrimination in the Federal service. Passage of this statute in 1967 helped foster the creation of the Federal Women's Program and was the impetus behind the founding of Federally Employed Women.

E.O. 11478, issued by the Nixon administration in 1969, integrated all parts of personnel management—hiring, training, promotions, etc.—with equal opportunity and clearly spelled out affirmative action methods to accomplish these goals.

With the passage of the Equal Employment Opportunity Act of 1972 (P.L. 92-261), Federal sector employees were afforded title VII protection as well. The U.S. Civil Service Commission was mandated to take action to achieve measurable gains in employing women and minorities. In 1978, E.O. 12067 was issued by President Carter. E.O. 12607 transferred all EEO functions and affirmative action programs under the authority of the EEOC. In addition, the Garcia amendment to the Civil Service Reform Act (5 U.S.C. 7201) was passed which required all agencies to develop a Federal Equal Opportunity Recruitment Program [FEORP]. These laws and executive orders form the base for present day affirmative action and EEO guidelines in the Federal workplace. The head of each Federal executive department and agency is charged by the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 and by Executive Order 11478 with establishing and maintaining an affirmative action program of equal opportunity within each Federal agency. Guidance, leadership, and enforcement responsibilities for the Governmentwide program are assigned to the EEOC. The law, the executive order, and implementing regulations and instructions call for the application of this non-discrimination policy as an integral part of personnel policy and practice in employment, development, advancement, and treatment of civilian employees of the Federal Government. The Office of Personnel Management [OPM] is charged with providing

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guidance to agencies on career advancement programs. Also, EEOC and OPM, as required by Executive Order 12067, will consult on appropriate standards for a continuing review and evaluation of agency employment opportunity activities.

AFFIRMATIVE ACTION—DEFINED

Although a myriad of laws and regulations govern anti-discrimination and affirmative action practices in the Federal service, these laws and regulations would be useless without strict enforcement. Since its inception, affirmative action has been questioned, criticized, and ignored, much of this controversy stems from a lack of understanding of exactly what affirmative action is intended to accomplish. Affirmative action is not intended to compel employers to hire unqualified persons, nor is it a requirement imposed on employers regardless of their past history. It is simply a remedy to redress the continuing effects of past discrimination affirmative action is any race or sex conscious measure beyond passive restraint of discriminatory actions, which is supposed to correct or compensate for past and present discrimination.

Goals and timetables evolved when it became obvious that the best intentions by the public and private sector yielded little, if any positive results. Goals and timetables were designed to put results-oriented tools into the program. Furthermore, the use of numerical formulae forced employers to keep a current data base on the employment of women and minorities in various occupations across grade and salary levels. Such statistical analyses are needed to plot progress and plan new initiatives, as well as provide critial information when legal action is initiated.

THE STATUS OF WOMEN AND MINORITIES IN THE FEDERAL GOVERNMENT

Women and minorities have made gains in Federal employment in the past several years. From 1970 to 1980 an increase of women and minorities was evident in the middle grade levels (GS–9 through 12). The number of women increased form 13.6 percent of all GS–9 through 12 positions in 1970 to 21.3 percent of all GS–9 through 12 positions in 1980; the number of minorities in GS–9 through 12 positions increased from 17.5 percent to 25.5 percent in the same decade. (Statistics from OPM publication on "Minority Group Employment in Federal Government (1970–1980)"). Overall, women comprise 47 percent of the Federal workforce and minorities comprise 23 percent of the Federal workforce—both levels exceeding women and minority representation in the private sector (43 percent and 13 percent, respectively).

Although progress for women and minorities in the Federal Government is evident in the past fifteen years (and some of this progress is a direct result of affirmative action programs), the existence of an integrated workforce has not been realized. Women and minorities are still clustered at the lowest end of the general schedule grade—dominating the lowest paying jobs in the federal sector. Seventy-five percent of all women employed by the Federal Government are in GS grades 1 through 8. At the other extreme, white males occupy nearly all of the positions in the Senior Executive Service. Not only do women occupy the lowest paying occupations, but their dominance in a limited number of occupations is also evident. For example, 70 percent of all general administrative, clerical, and office service workers (occupational group 0300) are women, but only 5 percent of all the engineers and architects (occupational group 0800) are women. This occupational segregation can also be observed in the wage grade, work leader, and wage supervisor classification systems. In all of the 108 occupations covered in these three systems, over 96 percent are at least 70 percent male and nearly 77 percent are at least 90 percent male. (data from "Distribution of Male and Female Employees in Four Federal Classification Systems," GAO–GGD 85 20, November 27, 1984). Therefore, the deep rooted perserverance of sex and race discrimination and resulting occupational segregation and wage discrimination is still prevalent in the Federal Government. Additional remedies as well as strict enforcement of existing remedies are needed to increase promotional opportunities for women and minorities into the higher grades. There, they can have a positive impact upon public policy, helping our Government decision makers by reflecting the plurality of viewpoints present in our population at large.

CURRENT SITUATION OF AFFIRMATIVE ACTION IN THE FEDERAL SECTOR

The current erosion of civil rights laws in our country is proceeding at an alarming rate. The Department of Justice, the U.S. Commission on Civil Rights, and the EEOC have publically stated their opposition to results-oriented measures to erase

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sex discrimination in the Federal labor force. The very agencies charged with ensuring equal opportunities for all have denied their mandate.

On June 12, 1983, the Supreme Court handed down a decision that further hinders affirmative action laws. In *Firefighters Local Union 1784* v. *Stotts*, the Supreme Court ruled that employer layoffs must be in accordance with seniority even if increases in minority and female employment from court ordered affirmative action are wiped out in the process. Justice Byron White, in his written decision, dismissed extensive legislative history from the 1972 expansion of title VII and cast doubt on feature oriented quotas in hiring or promotion.

The results of these actions can already be seen in the Federal workforce. Although minorities and women have continued to make minimal gains in the Federal careeer ladder, their progress has remarkably slowed in the past several years (see table 1).

TABLE 1.—PERCENTAGE OF WOMEN WITHIN GRADE GROUPS

Grades	1974	1980	1982
1 to 4	75.9	76.8	76.8
5 to 8	57.6	64.8	66.5
9 to 12	18.9	26.9	30.4
13 to 15	4.8	8.2	10.3
SES/16 to 18	2.4	6.0	6.6

Source: Occupational Survey of Full Time Federal Civilian Employment Excluding U.S. Postal Service, Office of Personnel Management, 1974, 1980, 1982.

According to the report issued by the Subcommittee on Employment Opportunities of the Committee on Education and Labor entitled, "The State of Affirmative Action in the Federal Government: Staff Report Analyzing 1980 and 1983 Employment Profiles," the gains made by minorities and women in the super grades was non-existent from 1979 to 1983. Some of the Federal Government's largest agencies including the Departments of Army, Navy, Air Force, Interior, Commerce, Energy, and Transportation continue to have the most severe types of EEO problems. This group includes agencies with employment increases, but no significant progress for minorities and/or women, or others with cutbacks in their workforce with corresponding cutbacks in the representation of minorities and/or women, or those which continue to reflect a poor affirmative action record. The slowed rate of growth of women in top management positions in the Federal sector is also observed in the Presidential appointments of women to Federal departments from January 1981 to April 1983. During that time period, 287 Presidential appointments were made to Federal departments, but only 24 of those appointments were women (around 8.4 percent). (Source of data is the U.S. Commission on Civil Rights, "Equal Opportunity in Presidential Appointments," June 1983).

This lack of progress for women and minorities is partially due to the erosion of strong affirmative action programs. Another causal factor is the recent reductions in force [RIF's] that have disproportionately impacted women and minorities. The gains to middle management by women and minorities are relatively recent, so under the policy of "last-hired, first-fired" women and minorities are adversely affected. Thus, not only have we not reached the top, but we are losing ground in the mid-levels.

PRACTICES AND PROBLEMS OF AFFIRMATIVE ACTION

In preparation for this testimony, FEW conducted an informal survey among members who are employed in EEO capacities (Defense and non-Defense agencies). Although the comments regarding current EEO practices were varied, an underlying theme recurred. All survey participants noted that the laws needed to promote affirmative action and curb discrimination are present, but that the implementation and enforcement of those laws range from limited to non-existent. It became evident during the course of the survey that the progress of affirmative action in any agency or department is dependent upon the individual management in that agency or department. Where commitment to EEO exists, affirmative action plans are implemented. Where EEO is non-existent, no affirmative action is evident. Furthermore, no recrimination is evident when agencies fail to abide by EEO guidlines.

Another complaint that surfaced several times was the attempt to de-emphasize EEO programs by integrating them into the personnel offices. The EEO function

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has traditionally been under the supervision of the Secretary of the agency. Several agencies have, however, downgraded this function to other vessels. This action not only de-emphasizes the role of EEO in an agency, but places burdens on EEO specialists who must also act in a personnel capacity. In related incidents, Federal Women Program Managers [FWPM's] who oversee EEO and affirmative action functions for women are often assigned their FWP responsibilities as a collateral duty. This means they are performing another job in addition to their EEO responsibilities.

Several survey participants reported cases where a male was assigned to an office where a vacancy was anticipated. As soon as the vacancy was realized, the man would be offered the higher grade position. This practice of "lining up men" for top management positions is apparently fairly common in the Federal Government and negates much of the progress that affirmative action could achieve if the position were open to competition and the need for more women and minorities in higher grades emphasized.

Disillusionment with EEO laws and affirmative action programs in the Federal sector is rampant. Agency heads are not held accountable for their lack of actions in fostering EEO in the workplace. Several people cited some progress in the hiring of women and minorities. But they emphasized that the job of promoting women and minorities had just begun. Strong enforcement of current laws are necessary for women and minorities to continue to make inroads in Federal employment. The courts have long noted that one purpose of EEO is to insure that everyone has a chance to gain his or her "rightful place" at work. We still have a long way to go and without making affirmative action a priority, we won't get there.

The lack of enforcement of EEO laws and affirmative action is evident by the increased number of complaints being filed. In the FY82 EEOC report on precomplaint and complaint processing, it is noted that the top two categories of complaints are race-black and sex-female with 14 percent of the complaints based on sex (or 2,987 allegations of sex discrimination) and 21.3 percent of the complaints based on race (or 4,506 allegations of race discrimination). In the same report for FY83, the allegations of discrimination increased for totals of 22.7 percent based on race (5,629) and 14.2 percent based on sex (3,250).

BENEFITS OF AFFIRMATIVE ACTION

Well implemented and effective affirmative action plans afford many benefits. In addition to the obvious increase in the number of women and minorities in the Federal service, the conscience of the Federal Government as an equal opportunity employer is raised. Affirmative action utilizes the talents of many individuals who would otherwise be stifled by bias. Opening and increasing career opportunities expands the purchasing power of women and minorities, and reduces the burden of taxpayers to support those unable to support themselves. In addition, affirmative action promotes fair and rational employment policies and better decision-making through the presence of diverse viewpoints at all levels of the workplace.

RECOMMENDATIONS

FEW recommends that the Federal Government increase its concentration on race and sex conscious tools to achieve a well-integrated workforce and continue to use statistical measures of compliance with non-discrimination such as goals and timetables. We also recommend that the full range of remedies and sanctions be available including back pay and debarment as an incentive to compliance. We would like to see the reestablishment of strong enforcement of affirmative action programs within the Federal agencies as well as retain plans for agencies and federal contractors to utilize goals and timetables in affirmative action plans.

We commend Representative Cardiss Collins for introducing H.R. 781. "The equal Employment Opportunity Commission Amendments of 1985" provides procedures to ensure compliance with Federal EEO laws. We urge this committee to pass H.R. 781.

CONCLUSION

Affirmative action is a necessary tool for women and minorities to reach their full potential in the public sector as well as the private sector or employent. A society which affords fair treatment to women and minorities is a stronger society by far, then one which excludes them from full participation. Thank you for asking FEW to testify before the committee today. I would be happy to answer any questions.

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Mr. MARTINEZ. Thank you.

Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman.

On behalf of Blacks in Government, I would like to thank you and the subcommittee for this opportunity to speak on the important matter of the Federal Equal Employment Opportunity Program and the enforcement responsibilities of the Equal Employment Opportunity Commission. This is a matter of great concern to the members of Blacks in Government.

As background, Blacks in Government is a nonprofit and nonpartisan national organization of black Federal, State, and local government employees. Our organization was founded and organized in 1975, and incorporated in the District of Columbia in 1976.

After a decade of existence, we find that the purposes for which we organized in 1975 are no less critical and essential today. The barriers to equal employment opportunity remain a continuing threat and impediment to our progress and participation in the Federal civil service system. Therefore, we believe it is important for the Equal Employment Opportunity Commission to function efficiently and effectively in carrying out its statutorily mandated roles and responsibilities for the Federal Equal Employment Opportunity Program.

We applaud the EEOC for its efforts in improving certain internal operations, particularly in the Office of Reviews and Appeals. Our observations and recommendations concerning the EEOC's compliance and enforcement activities are intended to encourage constructive and strengthening enhancements.

In order to understand the premises upon which Blacks in Government provides its views of EEOC operations, I would like to briefly describe our concept of the Federal Government as a single employer. This concept has been evolving since the enactment of the Pendleton Act over 100 years ago.

There are two critical dimensions to this concept. One, as a single employer, the Federal Government is obliged to carry out its personnel management responsibilities with consistence and uniformity. Civil service laws, rules, and regulations must be applied to all Federal agencies and workers with few, if any, exceptions.

Two, merit and equity are the cornerstones of any viable and realistic civil service system. Merit and equity are the two sides of the same coin. You cannot have merit without equity. All aspects of civil service must possess these fundamental characteristics in order to protect the rights of civil servants and to ensure efficiency, effectiveness, and economy of Government operations.

We believe that this concept guided the development and enactment of the Civil Service Reform Act of 1978.

The problems which we are addressing today concerning equal employment opportunity compliance and enforcement should be viewed from the standpoint of the Federal Government as a single employer.

Section 310 of the Civil Service Reform Act of 1978 establishes the Federal Minority Recruitment Program as a means of getting Federal agencies to increase the pool of minorities and women who might qualify for selection of positions in occupations with clear underrepresentation.

The current role of the EEOC is threefold: One, to consult with the Office of Personnel Management on determinations of occupations with underrepresentation; two, establish agency guidelines for the minority recruitment program; and three, send information on determinations of underrepresentation to agencies.

The clear presumption in this provision is that agencies will incorporate these determinations of underrepresentation and recruitment activities into their affirmative action programs and plans.

Blacks in Government has serious reservations and concerns with this arrangement. We believe that it would make better management sense to unify all equal employment opportunity requirements in one agency, the EEOC, for the sake of uniformity and consistency, as well as merit and equity. Also, there is no small amount of confusion and complications on the part of agencies which must respond to the paperwork requirements of both EEOC and OPM.

Just as the framers of the Civil Service Reform Act sought to create a central personnel organization, so, we believe, it makes good management sense to have a central equal employment opportunity organization with full responsibility for all aspects of EEO. In point of fact, we think that the roles of EEOC and OPM should be reversed; that is, EEOC should have full responsibility for the minority recruitment program, and OPM should be consulted on personnel aspects. The current arrangement probably further exacerbates agency compliance with the requirement to prepare and submit affirmative action plans.

We need a one-stop shop for all Federal equal employment opportunity activities. It is inconceivable to us that a critical responsibility of the Commerce Department's mission would be handled by the Department of Interior, or that the State Department would have to consult with the Department of Labor on some important aspect of diplomacy.

As you know, the Federal track record for timely and accurate processing of discrimination complaints is abysmal. According to recent studies and analyses by the General Accouting Office, as well as feedback we have received through our own Agency Watch Program, far too many complaints are experiencing extraordinary delays. Again, we believe that justice delayed is justice denied.

These inordinate delays are due to a myriad of complications, not the least of which is the inherent conflict within Federal agencies. For instance, the EEO counseling process is cumbersome and often inefficient and ineffective; the EEO investigative process takes absolutely too long to initiate and complete; the informal adjustment process is equally truncated and disjointed. Often the management officials involved act in their own self-interests which conflict with the objective of achieving an impartial resolution of the matter giving rise to the complaint; the EEO decisionmaking process in agencies too often gives the appearance of protecting management interests, as opposed to rendering a fair and objective decision; and the EEOC appeals process is interminable in length.

Mr. MARTINEZ. Mr. Rogers, I am going to have to interrupt you right there. Keep your place. We have to go down and vote on the markup for the plant closure bill. We will return in about 10 minutes.

Mr. ROGERS. Very good.

[Whereupon, the subcommittee was in recess.]

Mr. MARTINEZ. We are now reconvened.

Mr. Rogers, would you pick up where you left off.

Mr. ROGERS. Thank you, Mr. Chairman.

Moreover, our members have told us that one of the most irritating and offensive aspects of the discrimination complaint process is the inequitable manner in which complainants are held to rigid compliance with the various timeframes for completion of process steps, while EEO processing staff are not similarly tasked or held accountable.

We note that within the past year the EEOC has developed a number of proposed changes to its regulations for discrimination complaint processing. The following are our recommendations for making further improvements in managing the discrimination complaint process:

First, the EEO counseling process should be professionalized and conducted by skilled and knowledgeable specialists; second, the EEOC should develop an expedited procedure for effective resolution of complaints at the informal stage; third, all EEO investigations should be conducted under the direction of the EEOC; fourth, all complainants should continue to be entitled to the right of a hearing, without exception; five, all EEOC complaint decisions should be final decisions and not negotiated decisions; and sixth, the EEOC's staff resources should be increased to accommodate the foregoing full responsibilities.

Furthermore, we believe very strongly that the EEOC should exercise more frequently its current authority to hold agency officials accountable for expeditious and effective implementation of discrimination complaint decisions. There needs to be a consequence for failure to follow a lawful EEO decision.

Blacks in Government supports H.R. 781 because we believe that the Federal Government is a single employer and, as such, must carry out civil service laws in a uniform and consistent manner. Presently, there is a disparity between agencies which comply with EEO laws and those which do not comply. There is no apparent system of consequence for failure of an agency to identify and correct its EEO problems in an affirmative manner. The signals which noncomplying agencies are sending to those which are complying are threats to merit and equity throughout the Federal civil service system. The system will not long endure if this selective compliance continues.

Therefore, Blacks in Government urges passage of H.R. 781, with one additional proviso. Compliance with the requirement to submit an affirmative action plan should be required 30 days after EEOC identifies an instance of unlawful and unacceptable compliance. H.R. 781 may be the only means of achieving EEO compliance and enforcement at this time.

Blacks in Government appreciates this opportunity to appear before the Subcommittee on Employment Opportunities and to comment on Federal EEO program compliance and enforcement activities.

We recommend that the EEOC be given full responsibility for the minority recruitment program. We propose that the EEOC be

given complete responsibility for all major components of the discrimination complaint process, that is, with adequate staff and other resources. Finally, we support passage of H.R. 781 because a system of consequences is needed to avoid noncompliance in the preparation and submission of the statutorily mandated affirmative action plan.

Mr. Chairman, I will be glad to respond to any questions which you or any member of the committee may wish to ask.

[The prepared statement of James. E. Rogers follows:]

PREPARED STATEMENT OF JAMES E. ROGERS, JR., NATIONAL PRESIDENT, BLACKS IN GOVERNMENT

Mr. Chairman, on behalf of Blacks in Government, I would like to thank you and the subcommittee for this opportunity to speak on the important matter of the Federal Equal Employment Opportunity Program and the enforcement responsibilities of the Equal Employment Opportunity Commission. This is a matter of great concern to the members of Blacks in Government.

As background, Blacks in Government is a nonprofit and nonpartisan national organization of Black Federal, state and local government employees. Our organization was founded and organized in 1975, and incorporated in the District of Columbia in 1976.

After a decade of existence we find that the purposes for which we organized in 1975 are no less critical and essential today. The barriers to equal employment opportunity remain a continuing threat and impediment to our progress and participation in the Federal civil service system. Therefore, we believe it is important for the Equal Employment Opportunity Commission to function efficiently and effectively in carrying out its statutorily mandated roles and responsibilities for the Federal Equal Employment Opportunity Program.

We applaud the EEOC for its efforts in improving certain internal operations, particularly in the Office of Reviews and Appeals. Our observations and recommendations concerning the EEOC's compliance and enforcement activities are intended to encourage constructive and strengthening enhancements.

THE FEDERAL GOVERNMENT AS A SINGLE EMPLOYER

In order to understand the premises upon which Blacks In Government provides its views of EEOC operations, I would like to briefly describe our concept of the Federal government as a single employer. This concept has been evolving since enactment of the Pendleton Act over one hundred hears ago. There are two critical dimensions to the concept:

1. As a single employer the Federal government is obliged to carry out its personnel management responsibilities with consistence and uniformity. Civil service laws, rules and regulations must be applied to all Federal agencies and workers, with few if any exceptions.

2. Merit and equity are the cornerstones of any viable and realistic civil service system. Merit and equity are the two sides of the same coin. You cannot have merit without equity. All aspects of civil service must possess these fundamental characteristics in order to protect the rights of civil servants, and to insure efficiency, effectiveness and economy of government operations.

We believe that this concept guided the development and enactment of the Civil Service Reform Act of 1978.

The problems which we are addressing today, concerning equal employment opportunity compliance and enforcement, should be viewed from the standpoint of the Federal government as a single employer.

THE FEDERAL AFFIRMATIVE ACTION AND MINORITY RECRUITMENT PROGRAMS

Section 310 of the Civil Service Reform Act of 1978 establishes the Federal Minority Recruitment Program as a means of getting Federal agencies to increase the pool of minorities and women who might qualify for selection of positions in occupations with clear underrepresentation. The current role of the EEOC is threefold:

1. Consult with the Office of Personnel Management (OPM) on determinations of occupations with underrepresentation;
2. Establish agency guidelines for the Minority Recruitment Program; and
3. Sent information on determinations of underrepresentation to agencies.

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The clear presumption in this provision is that agencies will incorporate these determinations of underrepresentation and recruitment activities into their affirmative action programs and plans.

Blacks in Government has serious reservations and concerns with this arrangement. We believe that it would make better management sense to unify all equal employment opportunity requirements in one agency, the EEOC, for the sake of uniformity and consistency as well as merit and equity. Also, there is no small amount of confusion and complications on the part of agencies which must respond to the paperwork requirements of both EEOC and OPM.

Just as the framers of the Civil Service Reform Act sought to create a central personnel organization, so, we believe, it makes good management sense to have a central equal employment opportunity organization with full responsibility for all aspects of EEO. In point of fact, we think that the roles of EEOC and OPM should be reversed, that is, EEOC should have full responsibility for the Minority Recruitment Program and OPM should be consulted on personnel aspects. The current arrangement probably further exacerbates agency compliance with the requirement to prepare and submit Affirmative Action Plans.

We need a one-stop shop for all Federal equal employment opportunity activities. It is inconceivable to us that a critical responsibility of the Commerce Department's mission would be handled by the Department of Interior; or, that the State Department would have to consult with the Department of Labor on some important aspect of diplomacy.

EEOC COMPLAINT PROCESSING

As you know, the Federal track record for timely and accurate processing of discrimination complaints is abysmal. Acccording to recent studies and analyses by the General Accounting Office, as well as feedback which we have received through our Agency Watch Program, far too many complaints are experiencing extraordinary delays. Again, we believe that justice delayed is justice denied.

These inordinate delays are due to a myriad of complications not the least of which is the inherent conflict within Federal agancies. For instance:

1. The EEO counselling process is cumbersome and often inefficient and ineffective;
2. The EEO investigative process takes absolutely too long to initiate and complete;
3. The Informal Adjustment process is equally truncated and disoriented. Often the managment officials involved act in their own self interests which conflict with the objective of achieving an impartial resolution of the matter giving rise to the complaint;
4. The EEO Decision-making process in agencies too often gives the appearance of protecting managment interests, as opposed to rendering a fair and objective decision; and
5. The EEOC Appeals process is interminable in length.

Moreover, our members have told us that one of the most irritating and offensive aspects of the discrimination complaint process, is the inequitable manner in which complainants are held to rigid compliance with the various timeframes for completion of process steps, while EEO processing staff are not similarly tasked, or held acountable.

We note that within the past year the EEOC has developed a number of proposed changes to its regulations for discrimination complaint processing. The following are our recommendations for making further improvements in managing the discrimination complaint process:

1. The EEO Counselling process should be professionalized and conducted by skilled and knowledgeable specialists;
2. The EEOC should develop an expedited procedure for effective resolution of complaints at the informal stage;
3. All EEO investigations should be conducted under the direction of the EEOC;
4. All complainants should continue to be entitled to the right of a hearing, without exception;
5. All EEOC complaint decisions should be final decisions and not negotiated decisions; and
6. The EEOC's staff resources should be increased to accommodate the foregoing full responsibilities.

Furthermore, we believe very strongly that the EEOC should exercise, more frequently, its current authority to hold agency officials accountable for expeditious

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and effective implementation of discrimination complaint decisions. There needs to be a consequence for failure to follow a lawful EEO decision.

H.R. 781: EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AMENDMENTS OF 1985

Blacks in government supports H.R. 781 because we believe that the Federal government is a single employer, and as such, government must carry out civil service laws in a uniform and consistent manner. Presently, there is disparity between agencies which comply with EEO laws and those which do not comply. There is no apparent system of consequence for failure of an agency to identify and correct its EEO problems in an affirmative manner. The signals which non-complying agencies are sending to those which are complying are threats to merit and equity throughout the Federal civil service system. The system will not long endure if this selective compliance continues.

Therefore, blacks in Government urges passage of H.R. 781 with one additional proviso. Compliance with the requirement to submit an Affirmative Action Plan should be required 30 days after EEOC identifies an instance of unlawful and unacceptable compliance. H.R. 781 may be the only means of achieving EEO compliance and enforcement, at this time.

SUMMARY AND CONCLUSION

Blacks in Government appreciates this opportunity to appear before the Subcommittee on Employment Opportunities and to comment on Federal EEO Program compliance and enforcement activities.

We recommend that the EEOC be given full responsibility for the Minority Recruitment Program. We propose that the EEOC be given complete responsibility for all major components of the discrimination complaint process, that is, with adequate staff and other resources. Finally, we support passage of H.R. 781 because a system of consequences is needed to avoid noncompliance in the preparation and submission of the statutorily mandated affirmative action plan.

Mr. Chairman, I will be glad to respond to any questions which you or other members of the subcommittee may wish to ask.

Mr. MARTINEZ. Thank you, Mr. Rogers.

Do you have any questions, Mr. Hayes?

Mr. HAYES. Just one. You mentioned time when violations are found. On page 7 you say "Compliance with the requirement to submit an affirmative action plan should be required 30 days after EEOC identifies an instance of unlawful and unacceptable compliance." Are you suggesting a 30-day remedy would eliminate the current delay that exists within the statute?

Mr. ROGERS. That is correct. In light of the enforcement recommendations made in H.R. 781, we believe that that length of time should have a time limit imposed upon it, and we would propose that a 30-day period would be sufficient to get that accomplished.

Mr. HAYES. How have blacks faired since 1981 within the Federal Government? Do you have any numbers?

Mr. ROGERS. As far as how we have faired? Unquestionably, we have not faired as well as we would have liked to. We have also discovered in our research that a number of the employees that were the subject of RIF's during the period of 1981 to 1983, which happened to be a number of our members, were treated unfairly pursuant to the process which was employed through the RIF process. We believe that, pursuant to the concept that the Government is a single employer, these individuals could have been saved in the process, of retraining those individuals to be retained by other agencies which, in fact, hired persons during that same period of time.

Mr. HAYES. What do you mean by negotiated decisions?

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Mr. ROGERS. There is a process involved that is currently used of having the EEOC write recommended decisions back to the agencies, for the agency's consideration as to whether or not they will enforce or implement said decision. In any instance where there is no final authority by an independent third party, and a party to a litigation can have input to the implementation process, there is an inherent conflict of interest.

We believe this situation should be similar to that we find in the labor area, in which an arbitrator would come in as an independent third party——

Mr. HAYES. I thought that's what you meant. I just wanted you to say it.

Mr. ROGERS [continuing]. And render a final and binding decision on the parties.

Mr. HAYES. Thank you.

No further questions, Mr. Chairman.

Mr. MARTINEZ. Thank you, Mr. Hayes.

I need a clarification here because there seems to be two different procedures at the EEOC, one for the private and one for the public sector.

In the private sector, the new policy of the EEOC is to require a full offering by the employer before there can be any subsequent action of conciliation between the employer and the employee. That occurs when a qualified person has been denied a job because of discrimination by EEOC guidelines, the person would have to be put in that position before any negotiation occurs toward conciliation; then that really restricts an employer from negotiating something out that might even be in his or the complainant's best interests.

Conversely, in the public sector, a victim is asking just for the EEOC to make a decision. By putting that victim in the job, without any regard for that person or how difficult it is for him to operate, or maybe negotiate a transfer to another department. Wouldn't it be better for that employee?

Am I making myself clear what I'm talking about?

Mr. ROGERS. I believe I understand what you're saying. Our concern in this area is that the agency has a number of opportunities through the investigative process and through the various counseling sessions that are involved internally in the organization to render some type of negotiated settlement of an issue. Our concern is that we're currently operating under a system that has limited teeth, if any teeth at all, to make the agencies conform to a system.

If we are going to use the EEOC as a third party to come in and hear both sides of the case, then that party should have with it the authority to make some type of enforcement or have the authority to make a final and binding decision on the parties involved.

We have seen instances in which the system is creating a situation where a number of our members are losing faith in the process, and if the system is going to work, we must assure that it is one in which trust can endure.

Mr. MARTINEZ. What you're saying is that when both parties come in to tell their side of it, that is the negotiation right there. The Commission, or whoever the body is that is set up, makes the final decision at that time.

So it does not really exclude negotiation; rather it is going back another time and saying you guys work this out and then come to us with a recommendation and then we'll decide.

Mr. ROGERS. Exactly.

Mr. MARTINEZ. Thank you very much.

Miss Argana, you stated that under affirmative action women's employment in the Federal workforce has increased. But yet you indicate there is still widespread discrimination and it is still a problem, and you cite increasing allegations of discrimination. We have gained, but still there is increasing discrimination.

How do we explain that paradox?

Miss ARGANA. I think that in many cases—we have gained, but we haven't gained much; let me put it that way. In 1976—let me just give you some figures for 1980 and 1983. In grades 1 through 4, we are still the same, 76.8 percent of the people in those grades are women, in both years, no change at all. In grades 5 through 8, 64.8 percent were women and 66.5 in 1983. There is not much gain there. In grades 9 through 12, we have gone from 26.9 to 30.4. In grades 13 through 15, we have gone from 8.2 to 10.3. In the SES, the super grades, we have gone from 6.0 to 6.6.

We are gaining, but there is still not enough gain. So I think the increased number of complaints is not because we're not in but we're not being promoted perhaps at an equitable rate.

Mr. MARTINEZ. So it comes from, once you have gained access to the job——

Miss ARGANA. Yes, precisely.

Mr. MARTINEZ [continuing]. Then you are denied upward mobility?

Miss ARGANA. Yes, that is precisely what it is. We are there, but we haven't been able to be promoted at the same rate as men have been.

Mr. MARTINEZ. OK. It's like saying, "All right, come on, you're on the job, but don't expect anything more than that"?

Miss ARGANA. That's right.

Mr. MARTINEZ. Very good.

I have one last question that I would like both of you to respond to. It deals with the testimony we heard from the representatives of the three departments that would not comply with affirmative plans. The question has to do with their attitudes. How do we deal with that situation and, more importantly, how does that affect, let's say, the blacks, in your particular case, and the women, in your particular case, with them refusing to comply with the law.

Isn't this going to have an even greater impact on the things that you're fighting against?

Miss ARGANA. Oh, yes, without a doubt. I quite agree that if they don't comply with the law, they are violating their oath of office. The problem is there is nothing to be done about it at the moment—nothing is being done about it.

Mr. MARTINEZ. Probably the only thing that can be done is for us to pass out H.R. 781?

Miss ARGANA. Right.

Mr. ROGERS. I would like to follow up on that a bit, and that is why we have pursued the concept that the Federal Government is a single employer. I am sure that if we were in the private sector,

if a department or a division of a particular corporation did not follow corporate policy, the heads of that division would not be there and they would not have any responsibility as far as the furtherance of the corporate objectives and goals.

We believe that the Federal Government should operate the same way and that the agencies that make up the Federal Government are a part of the Federal Government and are one single employer. We are one United States and we are one Federal Government, and those agencies and departments are just parts. What is held for one should be equally held for others, and none should take exception to the general rules of law.

Mr. MARTINEZ What you're saying is 103 have complied and three have held themselves above the law?

Mr. ROGERS. Exactly.

Mr. MARTINEZ. Thank you both very much for joining us today and giving us your testimony, and thank you for being patient with us when we had to take that break.

Mr. ROGERS. Thank you very much.

Miss ARGANA. Thank you.

Mr. MARTINEZ. With that, we are adjourned.

[Additional material submitted for the record follows:]

AEROSPACE INDUSTRY EQUAL OPPORTUNITY COMMITTEE,
Culver City, CA, August 22, 1985.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: It has been widely reported that you are seriously considering revising Executive Order 11246, as amended, and eliminating the requirement that federal contractors establish numerical goals for the employment of minorities and women. The Aerospace Industry Equal Opportunity Committee (AIEOC) respectfully requests that you reject any recommendation to eliminate the numerical goal requirement. However, we do believe that modifications can be made to the Executive Order's implementing regulations and the Department of Labor should be permitted to begin that review process immediately.

We of AIEOC wonder why your Administration is so adamant in its opposition to the issue of numerical goals. The concept of numerical goals, in its present form, has been affirmed by the Johnson, Nixon, Ford, and Carter Administrations. It has certainly had bipartisan support from the Presidency since its inception in the late sixties. AIEOC does not know of any overriding effort by the business community to eliminate the numerical goal requirement in affirmative action planning. We would welcome a reduction in unnecessary paperwork requirements and believe significant revisions could be made to the regulations and still maintain the integrity of the program. Evidence that there is no effort by the business community to do away with numerical goals is reflected by the National Association of Manufacturers public comment that it has endorsed the concept of affirmative action and goals and timetables.

There is clear evidence that minorities and women have made substantial progress in entering the work place and moving up the corporate ladder during the last ten years.

All of the studies documenting this progress also point out that the contract compliance program has played a major role in this effort. Numerical goals are not new to the business community and are used in all facets of our operations. Financial, sales, production, marketing, and employment goals are all used as a measurement tool to evaluate progress, and we believe goals to measure the results of our efforts to employ minorities and women are a sound business practice.

The goals as established in our affirmative action plans are not quotas. We do not support preferential treatment and do not believe the present regulations require preferential treatment. We do support equal opportunity and believe the compliance program is an effort to insure that becomes a reality. Further, the courts have established a difference between a goal and a quota, and in so doing, have given validity to the establishment of numerical goals in affirmative action plans.

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We strongly believe that the decreased emphasis on affirmative action by your Administration, the weakening of its regulations (and the elimination of goals and timetables is clearly a weakening of the regulations), the reduction of OFCCP staff, and the emphasis toward a voluntary approach will all significantly reduce any chance for continued progress in the future. It will represent another step backward in our struggle against employment discrimination. It will, no doubt, have a chilling effect on the business community and slow down any ongoing programs which have been designed to improve opportunities for minorities and women.

In summary, AIEOC strongly believes that affirmative action planning does not abridge the rights of any group of employees, but is an excellent tool to plan and measure the utilization of all segments of our work force. Numerical goals do not give preferential treatment to any group(s), but again, are essential to the effective evaluation and measurement of an employer's efforts.

AIEOC has seen a great deal of progress in the employment of minorities and women since the contract compliance program was implemented in 1964. However, employment discrimination continues in our society, and we must not weaken the tools that have been designed to serve the needs of all citizens. The elimination of numerical goals would represent a major setback in our continuing struggle to achieve equal opportunity, and we hope you will reject any such proposal.

Sincerely,

JESSE R. RUBALCABA, *Chair.*

[Whereupon, at 12:40 p.m., the subcommittee was adjourned.]

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